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No. 16] NEW DELHI, APRIL 16—APRIL 22, 2017, SATURDAY/CHAITRA 26—VAISAKHA 2, 1939

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

( कार्मिक और प्रशिक्षण विभाग )

नई दिल्ली, 13 अप्रैल, 2017

**का.आ. 957.**—केन्द्र सरकार, दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तेलंगाना राज्य सरकार, गृह (एससी) विभाग की सहमति से दिनांक 23.09.2016 की जी.ओ. मैस. सं. 160 द्वारा निजी व्यक्तियों द्वारा या अलग से या केन्द्र सरकार/ केन्द्र सरकार के उपक्रम के कर्मचारियों के साथ मिलीभगत से किए गए निम्नलिखित अपराधों के अन्वेषण के लिए उक्त अधिनियम के अधीन दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों एवं क्षेत्राधिकार का विस्तार एतद्वारा तेलंगाना राज्य पर करती है :-

- (क) (i) भ्रष्टाचार निवारण अधिनियम, 1988 की संगत धाराओं के अधीन दण्डनीय अपराध (1988 का केन्द्रीय अधिनियम 49)
- (ii) भारतीय दण्ड संहिता के अधीन अपराध (1860 का केन्द्रीय अधिनियम 45) (अनुबंध-I में सूची)
- (iii) केन्द्रीय अधिनियम के अधीन अपराध (अनुबंध-II में सूची)
- (ख) उपरोक्त खण्ड (क) में विनिर्दिष्ट एक या अधिक अपराधों से संबंधित प्रयास, दुष्प्रेरण और आपराधिक षड्यंत्रों और उक्त के सम्पादन के दौरान अन्य कोई अपराध ।

[फा. सं. 228/04/2015-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

## अनुबंध-I

क. भारतीय दण्ड संहिता, 1860 (1860 का अधिनियम 45) की धारा 34, 114, 120-बी, 121, 121-ए, 122, 123, 124, 124-ए, 128, 129, 130, 131, 132, 133, 134, 135, 136, 138, 140, 143, 147, 148, 149, 153-ए, 153-बी, 166, 167, 168, 169, 171-ई, 171-एफ, 182, 186, 188, 189, 190, 193, 196, 197, 198, 199, 200, 201, 204, 211, 212, 214, 216, 216-ए, 218, 220, 222, 223, 224, 225, 225-बी, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 263-ए, 277, 279, 284, 285, 286, 292, 295, 295-ए, 302, 303, 304, 304-ए, 304-बी, 306, 307, 308, 309, 323, 324, 325, 326, 328, 330, 332, 333, 336, 337, 338, 341, 342, 343, 344, 346, 347, 352, 353, 354, 355, 363, 363-ए, 364, 365, 366, 367, 368, 376, 376-ए, 376-बी, 376-सी, 376-डी, 379, 380, 381, 382, 384, 385, 386, 387, 388, 389, 392, 393, 394, 395, 396, 397, 398, 399, 401, 403, 406, 407, 408, 409, 411, 412, 413, 414, 417, 418, 419, 420, 426, 427, 429, 431, 435, 436, 440, 447, 448, 452, 454, 456, 457, 465, 466, 467, 468, 469, 471, 472, 473, 474, 475, 476, 477-ए, 489, 489-ए, 489-बी, 489-सी, 489-डी, 489-ई, 495, 498-ए, 499, 500, 501, 502, 504, 505, 506, 507, 509 के अधीन दंडनीय अपराध ।

## अनुबंध-II

केन्द्रीय अधिनियम के अंतर्गत दंडनीय अपराध

1. वायुयान अधिनियम, 1934 (1934 का अधिनियम सं. 22) और उक्त अधिनियम के अधीन बनाए गए नियम
2. यान-हरण निवारण अधिनियम, 1982 (1982 का अधिनियम सं. 65)
3. परावशेष तथा बहुमूल्य कलाकृति अधिनियम, 1972 (1972 का अधिनियम सं. 52)
4. पुरावस्तु (आयात नियंत्रण) अधिनियम, 1947 (1947 का अधिनियम सं. 31) निरसित
5. आयुध अधिनियम, 1959 (1959 का अधिनियम सं. 54)
6. परमाणु ऊर्जा अधिनियम, 1962 (1962 का अधिनियम सं. 33)
7. केंद्रीय उत्पाद शुल्क तथा नमक अधिनियम, 1944 (1944 का अधिनियम सं. 1)
8. कंपनी अधिनियम, 1956 (1956 का अधिनियम सं. 1)
9. दंड कानून (संशोधन) अधिनियम, 1961 (1961 का अधिनियम सं. 23)
10. सीमा शुल्क अधिनियम, 1962 (1962 का अधिनियम सं. 52)
11. औषधि तथा प्रसाधन सामग्री अधिनियम, 1940 (1940 का अधिनियम सं. 23)
12. अत्यावश्यक वस्तु अधिनियम, 1955 (1955 का अधिनियम सं. 10)
13. विस्फोटक पदार्थ अधिनियम, 1884 (1884 का अधिनियम सं. 4)
14. विस्फोटक वस्तु अधिनियम, 1908 (1908 का अधिनियम सं. 6)
15. आपातकालीन संकट उपबंध (जारी) अध्यादेश, 1946 (1946 का अध्यादेश सं. 20) यदि केंद्रीय सरकार द्वारा जारी किसी आदेश का अतिक्रमण करके केंद्रीय सरकार के कर्मचारियों या सविदाकारों या उप-सविदाकारों या उनके प्रतिनिधियों द्वारा प्रतिबद्ध किया गया हो
16. विद्युत अधिनियम, 1910 (1910 का अधिनियम सं. 9)
17. विदेशी अभिदाय (विनियमन) अधिनियम, 1976 (1976 का अधिनियम सं. 49)
18. विदेशियों विषयक अधिनियम, 1946 (1946 का अधिनियम सं. 31)

19. विदेशी मुद्रा विनियमन अधिनियम, 1973 (1973 का अधिनियम सं. 46)
20. साधारण बीमा कारोबार (राष्ट्रीयकरण) अधिनियम, 1922 (1922 का अधिनियम सं. 57)
21. उपहार-कर अधिनियम, 1958 (1958 का अधिनियम सं. 18)
22. स्वर्ण नियंत्रण अधिनियम, 1968 (1968 का अधिनियम सं. 45)
23. आयकर अधिनियम, 1961 (1961 का अधिनियम सं. 43)
24. आयात एवं निर्यात (नियंत्रण) अधिनियम, 1947 (1947 का अधिनियम सं. 18)
25. बीमा अधिनियम, 1938 (1938 का अधिनियम सं. 4)
26. उद्योग (विकास तथा विनियमन) अधिनियम, 1951 (1951 का अधिनियम सं. 65)
27. मोटर वाहन अधिनियम, 1939 (1939 का अधिनियम सं. 4)
28. स्वापक औषध तथा नशीली वस्तु अधिनियम, 1985 (1985 का अधिनियम सं. 61)
29. शासकीय गोपनीयता अधिनियम, 1923 (1923 का अधिनियम सं. 19)
30. पासपोर्ट अधिनियम, 1920 (1920 का अधिनियम सं. 24) और पासपोर्ट नियमावली, 1950 का नियम-6
31. पासपोर्ट (भारत में प्रवेश) नियमावली, 1950 सपठित (भारत में प्रवेश) अधिनियम, 1920 (1920 का अधिनियम सं. 34)
32. पासपोर्ट अधिनियम, 1967 (1967 का अधिनियम सं. 15)
33. भ्रष्टाचार निवारण अधिनियम, 1947 (1947 का अधिनियम सं. 2)
34. भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 49)
35. डाकघर अधिनियम, 1898 (1898 का अधिनियम सं. 6)
36. खाद्य अपमिश्रण निवारण अधिनियम, 1954 (1954 का अधिनियम सं. 37)
37. लोक संपत्ति नुकसान निवारण अधिनियम, 1984 (1984 का अधिनियम सं. 3)
38. स्वापक औषध तथा नशीली वस्तुओं का अवैध दुर्व्यापार निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 46)
39. रेलवे अधिनियम, 1890 (1890 का अधिनियम सं. 9)
40. रेलवे सामग्री (अनधिकृत कब्जा) अधिनियम, 1955 (1955 का अधिनियम सं. 51)
41. लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का अधिनियम सं. 43)
42. लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का अधिनियम सं. 43)
43. विदेशियों का पंजीकरण अधिनियम, 1939 (1939 का अधिनियम सं. 16)
44. नागर विमानन सुरक्षा अनधिकृत कृत्य दमन अधिनियम, 1982 (1982 का अधिनियम सं. 66)
45. धार्मिक संस्थान (दुरुपयोग निवारण) अधिनियम, 1988 (1988 का अधिनियम सं. 41)
46. टेलीग्राफ अधिनियम, 1885 (1885 का अधिनियम सं. 13)
47. टेलीग्राफ (अनधिकृत कब्जा) अधिनियम, 1950 (1950 का अधिनियम सं. 74)

48. आतंकवादी तथा विध्वंसकारी कार्यकलाप (निवारण) अधिनियम, 1985 (1985 का अधिनियम सं. 31) तथा उसके अंतर्गत बनाए गए नियम
49. आतंकवादी तथा विध्वंसकारी कार्यकलाप (निवारण) अधिनियम, 1987 (1987 का अधिनियम सं. 28) तथा उसके अंतर्गत बनाए गए नियम
50. अनधिकृत कृत्यशोधन (निवारण अधिनियम, 1967) अधिनियम, 1967 (1967 का अधिनियम सं. 37)
51. बेतार तार यांत्रिकी अधिनियम, 1933 (1933 का अधिनियम सं. 17)
52. सम्पत्ति कर अधिनियम, 1957 (1957 का अधिनियम सं. 27)
53. सूचना और प्रौद्योगिकी अधिनियम, 2000

## MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

### (Department of Personnel and Training)

New Delhi, the 13th April, 2017

**S.O. 957.**—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of Delhi Special Police Establishment Act, 1946 (Act No.25 of 1946), the Central Government with the Consent of the State Government of Telangana, Home (SC) Department vide G.O Ms. No.160 dated 23.09.2016, hereby extends the powers and jurisdiction of the member of the Delhi Special Police Establishment under the said Act in the State of Telangana against Private Persons for alleged offences committed whether acting separately or in conjunction with Central/Government Undertaking employees, for investigation of the following offences :-

- (a) (i) offences punishable under the relevant sections of prevention of Corruption Act, 1988 (Central Act 49 of 1988).
- (ii) offences under the Indian Penal Code (Central Act 45 of 1860) (List in Annexure-I)
- (iii) offences under the Central Acts (List in Annexure-II).
- (b) attempts, abetments and criminal conspiracies in relation to or in connection with one or more offences specified in clause (a) above and any other offences committed in the course of the same transaction.

[F. No. 228/04/2015-AVD-II]

S. P. R. TRIPATHI, Under Secy.

### ANNEXURE I

IPC offences punishable under section 34, 114, 120 –B, 121, 121-A, 122, 123, 124, 124-A, 128, 129, 130, 131, 132, 133, 134, 135, 136, 138, 140, 143, 147, 148, 149, 153-A, 153-B, 166, 167, 168, 169, 171-E, 171-F, 182, 186, 188, 189, 190, 193, 196, 197, 198, 199, 200, 201, 204, 211, 212, 216, 216-A, 218, 220, 222, 223, 224, 225, 225-B, 231, 232, 233, 234, 235, 236, 237, 238, 240, 241, 242, 243, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 263-A, 277, 279, 284, 285, 286, 292, 295, 295-A, 302, 303, 304, 304-A, 304-B, 306, 307, 308, 309, 323, 324, 325, 326, 328, 330, 332, 333, 336, 337, 338, 341, 342, 343, 344, 346, 347, 352, 353, 354, 355, 363, 363-A, 364, 365, 366, 367, 368, 376, 376-A, 376-B, 376-C, 376-D, 379, 380, 381, 382, 384, 385, 386, 387, 388, 389, 392, 393, 394, 395, 396, 397, 398, 399, 401, 403, 406, 407, 408, 409, 411, 412, 413, 414, 417, 418, 419, 420, 426, 427, 429, 431, 435, 436, 440, 447, 448, 452, 454, 456, 457, 465, 466, 467, 468, 469, 471, 472, 473, 474, 475, 476, 477-A, 489, 489-A, 489-B, 489-C, 489-D, 489-E, 495, 498-A, 499, 500, 501, 502, 504, 505, 506, 507, 509 of Indian Penal code, 1860 (Act. No.45 of 1860).

### ANNEXURE II

#### **Central Acts: Offences punishable under:**

1. Aircraft Act, 1934 (Act No. 22 of 1934) and rules made under the said Act.
2. Anti-Hijacking Act, (1982 (Act No. 65 of 1982).
3. Antiquities and Treasures Act, 1972 (Act No. 52 of 1972)
4. Antiquities (Export Control) Act, 1947 (Act No. 31 of 1947) Repealed.

5. Arms Act 1959 (Act No. 54 of 1959).
6. Atomic Energy Act, 1962 (Act, No. 33 of 1962).
7. Central Excise and Salt Act. 1944 (Act No. 1 of 1944).
8. Companies Act, 1956 (Act No. 1 of 1956).
9. Criminal Law (Amendment) Act, 1961 (Act No.23 of 1961).
10. Customs Act, 1962 (Act No. 52 of 1962).
11. Drugs and Cosmetics act, 1940 (Act No. 23 of 1940).
12. Essential Commodities Act, 1955 (Act No. 10 of 1955).
13. Explosives Act, 1884 (Act No. 4 of 1884).
14. Explosives Substances Act, 1908 (Act No. 6 of 1908).
15. Emergency Provision (Continuance) Ordinance, 1946 (Ordinance No. 20 of 1946) if committed by the Employees of the Central Government or contractors or sub-contractors or their representatives by contravening any order issued by the Central Government.
16. Electric City Act, 1910 (Act No.9 of 1910).
17. Foreign Contribution (Regulation) Act, 1976 (Act No.49 of 1976).
18. Foreigners Act (Act No. 31 of 1946).
19. Foreign Exchange Regulation Act, 1973 (Act No. 46 of 1973).
20. General Insurance Business (Nationalisation) Act, 1922 (Act No. 57 of 1922).
21. Gift Tax Act, 1958 (Act No. 18 of 1958).
22. Gold Control Act, 1968 (Act No. 45 of 1968).
23. Income Tax Act, 1961 (Act No.43 of 1961).
24. Import and Export (Control) Act, 1947 (Act No. 18 of 1947).
25. Insurance Act, 1938 (Act No. 4 of 1938).
26. Industries (Development and Regulation )Act, 1951 (Act No.65 of 1951).
27. Motor Vehicles Act, 1939 (Act No. 4 of 1939).
28. Narcotics Drugs and Psychotropic Substances Act, 1985 (Act No. 61 of 1985).
29. Officials Secrets Act, 1923 (Act No.19 of 1923).
30. Passport Act, 1920 (Act No. 24 of 1920) and Rule-6 of Passport Rules, 1950.
31. The Passport (Entry into India) Rules. 1950 r/w Passport (Entry into India) Act, 1920 (Act No. 34 of 1920).
32. Passport Act, 1967 (Act No. 15 of 1967).
33. Prevention of Corruption Act, 1947 (Act No. 2 of 1947).
34. Prevention of Corruption Act, 1988 (Act No. 49 of 1988).
35. Post Office Act, 1898 (Act No. 6 of 1898).
36. Prevention of Food Adulteration Act, 1954 (Act No. 37 of 1954).
37. Prevention of Damage to Public Property Act, 1984 (Act No.3 of 1984).
38. The prevention of Illicit traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (Act No. 46 of 1988).
39. Railways Act, 1890 (Act No.9 of 1890).
40. Railways Stores (Unlawful Possession) Act, 1955 (Act No.51 of 1955).
41. Representation of the people Act 1950 (Act No. 43 of 1950).
42. Representation of the people Act 1951 (Act No. 43 of 1951).

43. Registration of Foreigners Act, 1939 (Act No. 16 of 1939).
44. Suppression Unlawful Acts against Safety of Civil Aviation Act, 1982 (Act No.66 of 1982).
45. The religious Institution (Prevention of Misuse Act, 1988) Act. No. 41 of 1988
46. Telegraph Act, 1885 (Act No. 13 of 1885).
47. Telegraph Wires (Unlawful Possession) Act, 1950 (Act No. 74 of 1950).
48. Terrorist and Disruptive (Prevention) Act, 1985 (Act No. 31 of 1985) and rules made thereunder.
49. Terrorist and Disruptive (Prevention) Act, 1987 (Act No. 28 of 1987) and rules made thereunder.
50. Unlawful Activities (Prevention Act 1967) Act No. 37 of 1967
51. Wireless and Telegraphy Act, 1933 (Act No. 17 of 1933).
52. Wealth Tax Act, 1957 (Act No. 27 of 1957).
53. I.T. Act, 2000

**वित्त मंत्रालय**

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 30 मार्च, 2017

**का.आ. 958.**—निक्षेप बीमा और प्रत्यय गारंटी निगम अधिनियम, 1961 (1961 का 47) की धारा 6 की उप-धारा 2 के खंड (ii) के साथ पठित धारा 6 की उपधारा (1) के खण्ड (घ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री हर्ष कुमार भानवाला, अध्यक्ष, नाबार्ड को दिनांक 12.06.2017 को या उसके बाद पदभार ग्रहण करने की तारीख से 17.12.2018 तक अथवा अगले आदेशों तक, जो भी पहले हो, निक्षेप बीमा और प्रत्यय गारंटी निगम (डीआईसीजीसी) के निदेशक मंडल में निदेशक नामित करती है।

[फा.सं. 6/13/2012-बीओ-I]

ज्ञानतोष राय, अवर सचिव

**MINISTRY OF FINANCE**

(Department of Financial Services)

New Delhi, the 30th March, 2017

**S.O. 958.**—In exercise of the powers conferred by clause (d) of sub-section (1) of Section 6 read with clause (ii) of sub-section 2 of Section 6 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), the Central Government hereby nominates Shri Harsh Kumar Bhanwala, Chairman, NABARD as a Director on the Board of Directors of Deposit Insurance and Credit Guarantee Corporation (DICGC) for a period upto 17.12.2018 from the date of his taking over charge of the post on or after 12.06.2017 or until further orders, whichever is earlier.

[F.No. 6/13/2012-BO-I]

JNANATOSH ROY, Under Secy.

नई दिल्ली, 31 मार्च, 2017

**का.आ. 959.**—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खण्ड 8 के उप-खंड (1) के साथ पठित, बैंकारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, स्टेट बैंक आफ हैदराबाद के मुख्य महाप्रबंधक श्री ए.सी. राउत (जन्म तिथि 13.04.1960) को पदभार ग्रहण करने की तारीख से प्रारंभिक तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, बैंक आफ महाराष्ट्र में कार्यपालक निदेशक नियुक्त करती है।

[फा.सं. 4/5/2016-बीओ-I]

ज्ञानतोष राय, अवर सचिव

New Delhi, the 31st March, 2017

**S.O. 959.**—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub clause (1) of clause 3 and sub clause (1) of clause 8 of The Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby appoints Shri A.C. Rout (DOB: 13.04.1960), Chief General Manager, State Bank of Hyderabad as Executive Director in Bank of Maharashtra initially for a period of 3 years w.e.f. the date of his taking over charge of the post or until further order, whichever is earlier.

[F.No. 4/5/2016-BO-I]

JNANATOSH ROY, Under Secy.

नई दिल्ली, 19 अप्रैल, 2017

**का.आ. 960.**—केन्द्रीय सरकार, बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा भारतीय रिज़र्व बैंक की सिफारिश पर, एतद्वारा, यह अधिसूचित करती है कि उक्त अधिनियम की धारा 10क की उप-धारा (2) के खंड (क) के परन्तुक के उपबंध, जिसमें यह अपेक्षा की गई है कि बैंकिंग कंपनियों के निदेशक मण्डल में कृषि तथा ग्रामीण अर्थव्यवस्था, सहकारिता अथवा लघु उद्योग के संबंध में विशेष जानकारी या व्यावहारिक अनुभव रखने वाले कम से कम दो व्यक्ति हों, वैसी बैंकिंग कंपनी पर लागू नहीं होंगे जिन्हें उक्त अधिनियम की धारा 22 के अंतर्गत भारत में भुगतान बैंक का कारोबार करने के प्रयोजन से लाइसेंस प्रदान किया गया है।

[फा.सं. 7/4/2017-बीओए]

सुरेन्द्र सिंह, अवर सचिव

New Delhi, the 19th April, 2017

**S.O. 960.**—In exercise of the powers conferred by section 53 of the Banking Regulation Act, 1949 (10 of 1949) and on the recommendation of the Reserve Bank of India, the Central Government hereby notifies that the provisions of the proviso to clause (a) of sub-section (2) of section 10A of that Act requiring the banking companies to have not less than two persons on the Board of Directors, having special knowledge or practical experience in respect of agriculture and rural economy, co-operation or small-scale industry shall not apply to a banking company which has been granted a licence for the purposes of carrying on payments bank business in India under section 22 of the said Act.

[F. No. 7/4/2017-BOA]

SURENDER SINGH, Under Secy.

### भारतीय रिज़र्व बैंक

मुंबई, 17 अप्रैल, 2017

**का.आ. 961.**—राष्ट्रीय आवास बैंक अधिनियम, 1987 (1987 का सं.53) की धारा 6(2) के साथ पठित धारा 6 के खण्ड (घ) की उपधारा (i) के अनुसरण में भारतीय रिज़र्व बैंक श्री आर. गाँधी के स्थान पर एतद्वारा श्री बी.पी. कानूनगो, उप-गवर्नर, भारतीय रिज़र्व बैंक को राष्ट्रीय आवास बैंक के निदेशक मंडल में बैंक के नामिती निदेशक के रूप में नामित करता है।

[अधिसूचना सं. बैंवि.एपीपीटी एनएचबी. 12301/08.21.006/2016-17]

सुदर्शन सेन, कार्यपालक निदेशक

### RESERVE BANK OF INDIA

Mumbai, the 17th April, 2017

**S.O. 961.**—In pursuance of clause (d) of sub-section (1) of Section 6 read with Section 6(2) of the National Housing Bank Act, 1987 (No.53 of 1987), Reserve Bank of India hereby nominates Shri B.P. Kanungo, Deputy Governor, Reserve Bank of India as the Bank's Nominee Director on the Board of Directors of the National Housing Bank vice Shri R. Gandhi.

[Notification No. DBR.Appt.NHB. 12301 /08.21.006/2016-17]

SUDARSHAN SEN, Executive Director

**वाणिज्य एवं उद्योग मंत्रालय****(वाणिज्य विभाग)**

नई दिल्ली, 13 अप्रैल, 2017

**का.आ. 962.**—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (2) के साथ पठित, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स एसजीएस इंडिया प्राइवेट लिमिटेड, बी०एन०टी० कनेक्शन भवन, 28बी/1(एसपी), 28बी/2(एसपी), दूसरा मुख्य मार्ग, अंबातुर औद्योगिक एस्टेट, अंबातुर, चेन्नई-600058, को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए भारत सरकार के वाणिज्य मंत्रालय की शासकीय राजपत्र भाग-II, खण्ड-3, उप खण्ड(ii), में दिनांक 20 दिसम्बर, 1965 की अधिसूचना सं० का.आ. 3975 के तहत प्रकाशित अधिसूचना में उपाबद्ध अनुसूचियों में विनिर्दिष्ट खनिज और अयस्क समूह-I, क्रम सं० दो पर निर्दिष्ट लौह अयस्क तथा अधिसूचना सं० का.आ. 3978 के तहत प्रकाशित अधिसूचना में उपाबद्ध अनुसूचियों में विनिर्दिष्ट खनिज और अयस्क समूह-II, क्रम सं० 7 और 8 पर निर्दिष्ट बैराइट्स और रेड ऑक्साइड को क्रमशः निर्यात से पूर्व निम्नलिखित शर्तों के अधीन चेन्नई पत्तन और एन्नोर पत्तन, तमिल नाडु में उक्त खनिज और अयस्क के निरीक्षण करने के लिए एक अभिकरण के रूप में मान्यता देती है, अर्थात् :

(i) यह अभिकरण, क्रमशः खनिज और अयस्क समूह-I का निर्यात (निरीक्षण) नियम, 1965 तथा खनिज और अयस्क समूह-II का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण की पद्धति की जाँच करने के लिये निर्यात निरीक्षण परिषद् द्वारा निमित्त नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी; और

(ii) यह अभिकरण, इस अधिसूचना के अधीन अपने कार्यों के पालन में निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद् द्वारा समय-समय पर लिखित रूप में दिए गए ऐसे निर्देशों से आबद्ध होंगी।

[फा.सं. के-डीओसी-16/14(2)/2017 - निर्यात निरीक्षण]

संतोष कुमार सारंगी, संयुक्त सचिव

**MINISTRY OF COMMERCE AND INDUSTRY****(Department of Commerce)**

New Delhi, the 13th April, 2017

**S.O. 962.**—In exercise of the powers conferred by the sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognises M/s SGS India Private Limited, B.N.T. Connection Building, 28B/1(SP), 28B/2(SP), Second Main Road, Ambattur Industrial Estate, Ambattur, Chennai-600058, as an agency (hereinafter referred to as the said agency), for a period of three years from the date of publication of this notification, for the inspection of Iron Ore specified at serial number 2 under Minerals and Ores Group-I, in the Schedule to the notification number S.O. 3975, dated the 20<sup>th</sup> December, 1965, and Barytes and Red Oxide specified at serial numbers 7 and 8 under Minerals and Ores Group-II, in the Schedule to the notification number S.O. 3978, dated the 20<sup>th</sup> December, 1965, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 20<sup>th</sup> December, 1965, prior to export of the said Minerals and Ores at Chennai Port and Ennore Port, Tamil Nadu subject to the following conditions, namely: -

- (i) the said agency shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to carry out the inspection specified under rule 4, respectively, of the Export of Minerals and Ores - Group I (Inspection) Rules, 1965 and the Export of Minerals and Ores - Group II (Inspection) Rules, 1965;
- (ii) the said agency in performance of its function as specified in this notification, shall be bound by such directions as the Director (Inspection and Quality Control), Export Inspection Council may give, in writing, from time to time.

[F.No. K-DoC-16/14(2)/2017 - Export Inspection]

SANTOSH KUMAR SARANGI, Jt. Secy.



नई दिल्ली, 18 अप्रैल, 2017

**का.आ. 963.**—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (2) के साथ पठित, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स जिओ-केम लैबोरेट्रीज प्राइवेट लिमिटेड, 21, विशाल, वागेश्वरी प्लॉट, दूसरी मंजिल, पोरबंदर, गुजरात - 360575 को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए अधिसूचना सं० का.आ. 3975 के तहत प्रकाशित अधिसूचना में उपाबद्ध अनुसूचियों में विनिर्दिष्ट खनिज और अयस्क समूह-1, क्रम सं० चार पर निर्दिष्ट कैल्साइंड बॉक्साइट सहित बॉक्साइट को निर्यात से पूर्व निम्नलिखित शर्तों के अधीन पोरबंदर पत्तन और ओखा पत्तन पर उक्त खनिज और अयस्क के निरीक्षण करने के लिए एक अभिकरण के रूप में मान्यता देती है, अर्थात् :

- (i) यह अभिकरण, खनिज और अयस्क समूह-1 का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण की पद्धति की जाँच करने के लिये निर्यात निरीक्षण परिषद् द्वारा निमित्त नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी; और
- (ii) यह अभिकरण, इस अधिसूचना के अधीन अपने कार्यों के पालन में निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद् द्वारा समय-समय पर लिखित रूप में दिए गए ऐसे निर्देशों से आबद्ध होंगी।

[फा.सं. के-डीओसी-16/14(1)/2017 - निर्यात निरीक्षण]

संतोष कुमार सारंगी, संयुक्त सचिव

New Delhi, the 18th April, 2017

**S.O. 963.**—In exercise of the powers conferred by the sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognises M/s Geo-Chem Laboratories Private Limited, 21, Vishal, Wageshwari Plot, 2nd Floor, Porbandar, Gujarat - 360575, as an agency (hereinafter referred to as the said agency), for a period of three years from the date of publication of this notification, for the inspection of Bauxite including calcined Bauxite, specified at serial number 4 under Minerals and Ores Group-I, in the Schedule to the notification number S.O. 3975, dated the 20<sup>th</sup> December, 1965, prior to export of said Minerals and Ores at Porbandar Port and Okha Port, subject to the following conditions, namely: -

- (i) the said agency shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to carry out the inspection specified under rule 4 of the Export of Minerals and Ores - Group I (Inspection) Rules, 1965;
- (ii) the said agency in performance of its function as specified in this notification shall be bound by such directions as the Director (Inspection and Quality Control), Export Inspection Council may give in writing from time to time.

[F.No. K-DoC-16/14(1)/2017 - Export Inspection]

SANTOSH KUMAR SARANGI, Jt. Secy.

### पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 20 अप्रैल, 2017

**का.आ. 964.**—भारत सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 2 की उप-धारा (क) के अनुसरण में उल्लेखित व्यक्ति को उक्त सारणी के खण्ड (2) में उल्लेखित क्षेत्रों के बाबत, गुजरात राज्य में मैसर्स रिलायंस इंडस्ट्रीज लिमिटेड (आर.आई.एल.), जिसका रजिस्टर्ड कार्यालय: मेकर चैम्बर्स - IV, (तीसरा तल), 222, नारीमान प्वाइंट, मुम्बई-400021 (महाराष्ट्र) [पत्राचार पता: रिलायंस इंडस्ट्रीज लिमिटेड, प्रथम तल, आनंद महल टावर - I, श्रीजी आरकेड के सामने, आनंद महल रोड, अडाजन, सूरत - 395009, गुजरात] की पेट्रोलियम एवं गैस पाइपलाइनों के लिये उक्त अधिनियम के अधीन सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए प्राधिकृत करती है :-

## सारणी

प्राधिकृत व्यक्ति का नाम और पता	अधिकारिता का क्षेत्र
(1)	(2)
1. श्री आर.एम.पटेल – सेवा निवृत्त आई.ए.एस., सक्षम प्राधिकारी, रिलायंस इण्डस्ट्रीज लिमिटेड, प्रथम तल, आनंद महल टावर – I, श्रीजी आरकेड के सामने, आनंद महल रोड, अडाजन, सूरत - 395009, गुजरात	गुजरात राज्य के सभी जिले

[फा0 सं0 एल-14014/41/2016-जी0पी0-II]

श्री प्रकाश अग्रवाल, अवर सचिव

## MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 20th April, 2017

**S.O. 964.**—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter called the said Act), the Central Government hereby authorizes the person mentioned in column (1) of the table given below to perform the functions of the Competent Authority under the said Act for the Petroleum & Gas Pipelines of Reliance Industries Limited(RIL), having its Registered Office at 3<sup>rd</sup> Floor, Maker Chambers IV, 222, Nariman Point, Mumbai – 400 021 (Maharashtra) [Address for Communication: Reliance Industries Limited, 1<sup>st</sup> Floor, Anand Mahal Tower – I, Opp. Shreeji Arcade, Anand Mahal Road, Adajan, Surat – 395009, Gujarat], in respect of areas mentioned in column (2) of the said Table:-

TABLE

Name of the Person and Address	Area of Jurisdiction
(1)	(2)
1. Shri R M Patel, Retired IAS, Competent Authority, Reliance Industries Limited, 1 <sup>st</sup> Floor, Anand Mahal Tower – I, Opp. Shreeji Arcade, Anand Mahal Road, Adajan, Surat – 395009, Gujarat	All districts of Gujarat State.

[F. No. L-14014/41/2016-GP-II]

S. P. AGARWAL, Under Secy.

## श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 10 अप्रैल, 2017

**का.आ. 965.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, बीएसएनएल और अन्य, चेन्नई एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 112/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/51/2002-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

**MINISTRY OF LABOUR AND EMPLOYMENT**

New Delhi, the 10th April, 2017

**S.O. 965.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 112/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, BSNL and other, Chennai and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/51/2002-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
CHENNAI**Wednesday, the 22<sup>nd</sup> March, 2017**Present :** K.P. PRASANNA KUMARI, Presiding Officer**Industrial Dispute No. 112/2003**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and 3 Others and their workman)

**BETWEEN :**

The Circle Secretary : 1<sup>st</sup> Party/Petitioner Union  
BSNL Employees Union  
No. 3/71, 4<sup>th</sup> Street, Raghava Nagar  
Madipakkam  
Chennai-600091

**AND**

1. The Chief General Manager : 2<sup>nd</sup> Party/1<sup>st</sup> Respondent  
BSNL Tamilnadu Circle  
Anna Salai  
Chennai-600002
2. The Chairman-cum-Managing Director : 2<sup>nd</sup> Party/2<sup>nd</sup> Respondent  
BSNL, Sanchar Bhawan  
New Delhi-110001
3. The General Manager, Telecom : 2<sup>nd</sup> Party/3<sup>rd</sup> Respondent  
BSNL  
K.K. District  
Nagercoil

**Appearance:**

For the 1<sup>st</sup> Party/Petitioner Union : M/s. K.M. Ramesh, Advocates  
For the 2<sup>nd</sup> Party/Respondents : Sri P. Srinivasan, Advocate

**AWARD**

The Central Government, Ministry of Labour & Employment vide its Order No. L-40011/51/2002-IR (DU) dated 20.06.2003 referred the following Industrial Dispute to this Tribunal for Adjudication.

The schedule mention in that order is:

“whether the regularization of Sri P. Ajit Kumar & 46 Order workmen are justified, if so, the relief they are entitled to?”

2. On receipt of the industrial Dispute this Tribunal numbered it as ID 112/2003 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively.
3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a registered Trade union having substantial number of permanent workmen working in BSNL as its member. The employees concerned in the dispute are doing cable work. They were working under the control and supervision of the Respondents. The work done by the employees is perennial in nature. Sponsorship from Employment Exchange is not required for class-IV employees. The concerned employees cannot be treated as contract employees. The so-called Contract system is a sham one. Supervision and control over the concerned workmen were exercised by the officials of the Respondents and not the so-called Contractors. There are sanctioned posts for regularizing the employees concerned in this case. The Respondent establishment is one come under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. The concerned employees have completed more than 480 days in service and are to be made permanent. An award may be passed holding that the workmen are entitled to absorption in the service of the Respondents from the date of their joining service, along with continuity of service and attendant benefits.

4. The First Respondent has filed Counter Statement on behalf of other Respondents as well, contending as below:

The petitioner has no locus-standi to espouse the cause of persons who are not employees of the Respondents. The petitioner is not a recognized union. The Contractors have not been impleaded as parties. So the dispute is having the defect of non-joinder of parties also. The claim of the petitioner that the concerned workmen are doing the same work as done by regular employees, that the work is perennial in nature, that there is direct control and supervision by the Respondents, that Contractors are offices of the Respondents, etc. are denied as incorrect. The petitioner has admitted the workmen as contract labourers and at the same time deliberately described them as casual labourers. These are inconsistent pleas. It is denied that the concerned workmen are doing the cable work. The allegation that the contract is sham is not correct. If the petitioner's claim that the workmen have worked for more than 480 days under the Contractor is true are at liberty to claim permanency with the Contractor. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and WW2 and MW1 and documents marked as Ext.W1 to Ext.W6 and Ext.M1 to Ext.M12.

**6. The point for Consideration is**

Whether the concerned workmen are entitled to absorption as claimed?

**The Point**

7. The petitioner union has raised the dispute on behalf of 47 workmen who are said to be doing cable work in the establishment of the Respondents. The name and other details of the 47 workmen are given in the annexure to the schedule of reference. The date on which they have started to work in the Respondent establishment also are continuously doing the work for the Respondents. Though they were working under so-called Contractors, the contract system itself is said to be a camouflage. It is claimed by the petitioner that the workmen were under the direct control and supervision of the officials of the establishment. The petitioner has claimed absorption of the workmen in the establishment on the basis that the contract is sham and also on the basis that all of them are entitled to be absorbed even otherwise as they have completed 480 working days in a period of 24 calendar months and they are entitled to the benefit to Tamil Nadu Industrial Establishment (Conferment of Permanent Status of Workmen) Act.

8. One of the concerned workmen has been examined as WW1. WW2 is the Circle Treasurer of the Petitioner Union. His evidence is intended the case of the Respondents that the petitioner has no locus-standi to espouse the cause of the workmen. MW1 is the Assistant General Manager examined on behalf of the Respondents to prove that contract system is existing in the establishment and there was not any employer-employee relationship between the concerned workmen and the Respondents.

9. WW1 has given evidence on behalf of all the workmen concerned. He has stated that himself and others were paid wages by a Junior Telecom Officer. The entire disciplinary control of the workmen was with the Respondents, it is further stated. The contract system put forth by the respondents is said to be a sham one. WW1 has given the names of the officials who had extracted work from the concerned workmen in the affidavit in lieu of Chief Examination filed by him.

10. During his cross-examination WW1 has stated that he had joined service of the Respondents in April 1994. However, the document produced on the side of the petitioner do not reflect this case. Ext.W1 contains statements of Stores Receipts. A few of them are in the name of WW1. His name is seen in Pages-4, 5 and 6. However, all these are of different months of the year 2003, after the dispute was raised. The failure report in the case is dated 20.11.2002. Thus these are documents which have apparently come into existence after the dispute was raised. Ext.W2 (series) are Gate Passes issued for taking materials from the Store. There are 15 such passes in the name of WW1. However, all these also are of dates after the dispute was raised. Apart from the above no other documents are available to show that WW1 had been working for the Respondents from the year 1994 as claimed by him. There is no proof at all to show that he had completed 480 days work in a period of 24 calendar months. There is nothing also to show he was doing

work which is perennial in nature for a long time before the dispute was raised. So there is no evidence to prove even the case of WW1 on whose behalf some documents are produced.

11. So far as other 46 workmen named in the annexure to the schedule of reference are concerned there are no document available at all. There is nothing to show that they have ever worked in the establishment or are continuing. None of them have come forward to give any evidence to justify their case also. So evidence is totally lacking to substantiate the case that contract system put forth by the Respondents is a false one. There is nothing also to show that the workmen have completed more than 480 days of work with the Respondents within 24 calendar months.

In the circumstances the petitioner is not entitled to any relief in behalf of concerned workmen.

In view of the above discussion the reference is answered against the petitioner.

An Award is passed accordingly.

(Dictated to the P.A., Transcribed and typed by him, corrected and pronounced by me in the open court on this day 22<sup>nd</sup> March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

#### **Witnesses Examined:**

For the 1<sup>st</sup> Party/Petitioner Union : WW1, Sri K. Suresh  
WW2, Sri K. Srinivasan

For the 2<sup>nd</sup> Party/Respondents : MW1, Sri L. George

#### **Document Maked:**

##### **On the Petitioner's side**

Ex.No.	Date	Description
Ext. W1 Series	02.04.2001 16.04.2001	Store receipt
Ext.W2 Series	09.09.2002 17.05.2003 06.09.2003 10.12.2003 -	Gate passes Gate pass
Ext.W3	-	Annexure in the 2(K) petition
Ext.W4	-	Bye-lawa of the Union
Ext.W5	30/31 Oct'2001	Resolution Of the union
Ext. w6	21.03.2006	Lok Sabha Admitted Provisional Starred Question Dy No. 10145 for 19.2.2005 by Shri Ganesh Singh regarding regularization of contract Workers.

##### **On the Management's side**

Ex.No.	Date	Description
Ext.M1	24.12.1992	Copy of DOT, New Delhi letter No.29-18/91-SRT dated 24.12.1992 addressed to CGMR, Calcutta Phones and Endorsement No. E.1/107/Blgs/92-93/3dated Tr-1the 02.02.1993
Ext.M2	30.03.1985	Office of the Director General Posts & Telegraphs regarding ban order for recruitment of casual labours
Ext.M3	25.07.1989	Letter from Chief General Manager, Telecommunication, Tamil Nadu Circle, Madras-600002 regarding eligibility of casual labour to become office bearer of the Unions
Ext.M4	-	Copy of Page 137 of Appendix 3 from P& T Manual vol.III
Ext.M5	-	Copy of Appendix No. 3 –Presrvation of Records
Ext.M6	05.11.2001	Letter from BSNL to all Chief General Managers regarding adoption of the existing Appointing Authorities in respect of absorption of Group C and D staff in BSNL

Ext.M7	-	Copy of Apendix 13A at page 426 of Financial & Hand Book of P&T Rules which deals with Rules-331
Ext.M8	-	Copy of letter from CGM, Telecom, Chennai to Subordinate Offices
Ext.M9	13.10.2005	Tender for HK & Gs for NGC SDCA-Zone Awarding of Tender-reg
Ext.M10	30.12.2002	Of Certificate of Registration Contract Labour (Regulation and Abolition) Act, 1970 and Central rules, 1971-Grant-reg
Ext.M11	22.06.1995	Copy of the document of prescribed procedure to be followed by the Department in the appointment of Group "D" employees caregory
Ext.M12	19.11.2005	Award of Tender.

नई दिल्ली, 10 अप्रैल, 2017

**का.आ. 966.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार, बीएसएनएल, त्रिची व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 322/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/08/2003-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th April, 2017

**S.O. 966.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 322/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom, BSNL, Trichy and others and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/08/2003-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 22<sup>nd</sup> March, 2017

**Present :** K.P. PRASANNA KUMARI, Presiding Officer

#### Industrial Dispute No. 322/2004

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and Two Others and their workman)

#### BETWEEN :

The Circle Secretary : 1<sup>st</sup> Party/Petitioner Union  
BSNL Employees Union  
No. 3/71, 4<sup>th</sup> Street, Raghava Nagar  
Madipakkam  
Chennai-600091

#### AND

1. The General Manager : 2<sup>nd</sup> Party/1<sup>st</sup> Respondent  
Telecom, BSNL  
Trichy
2. The Chairman & Managing Director : 2<sup>nd</sup> Party/2<sup>nd</sup> Respondent  
BSNL, Sanchar Bhawan  
New Delhi-110001
3. The Chief General Manager : 2<sup>nd</sup> Party/3<sup>rd</sup> Respondent  
BSNL Tamilnadu Circle

Anna Salai  
Chennai-600002

### Appearance:

For the 1<sup>st</sup> Party/Petitioner Union : M/s. K.M. Ramesh, Advocates  
For the 2<sup>nd</sup> Party/Respondents : Sri D. Simon, Advocate

### AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40011/8/2003-IR (DU) dated 13.02.2004 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

*“Whether the claim of the Union for absorption of contract labourers (as per annexure) by the BSNL, Telecom, Trichy is legal and justified and if so to what relief the workmen are entitled to?”*

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID 322/2004 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a Union registered under the Trade Unions Act. It has a substantial number of permanent workmen working in BSNL as its members. The workmen concerned in the ID are doing cable work. They are working through the alleged contractor. Even though the contractors change often the employees continue to be the same. All the employees concerned in the dispute are Class-IV employees for whom sponsorship from Employment Exchange is not required. The contract system is only a camouflage. The overall control of the so-called contract labour remains with the telecom department. There are regular sanctioned posts for regularizing the employees concerned in the case. The concerned workmen are entitled to be made permanent on completion of 480 days in a period of 24 calendar months. The workmen are entitled to be absorbed in the establishment from the date of their joining the service.

4. The First Respondent has filed Counter Statement contending as below:

The Petitioner Union is not a representative Union of BSNL. Apart from that the Union was originally having membership of regular staff alone. The workmen concerned in the dispute are not members of the Petitioner Union. So the Union is not competent to represent them. The concerned workmen are not known to the Respondents. The Trichy Telecom District Area has entered into Cable Laying Work Contract with some agencies. The work is not of primary nature. The work is supervised by the contractual agency. The Respondents pay bills to the concerned agency only. The petitioner has no *locus-standi* to espouse the cause of persons who are not employees of the Respondents. The Contractors were given work according to the work requirement only. BSNL is not responsible for the labourers employed by the Contractors. A regular set of staff is available for carrying out regular nature of work in BSNL. The work done by the contract workers are not perennial in nature. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence WW1 to WW3 and MW1 and MW2 and documents marked as Ext.W1 to Ext.W19 and Ext.M1 to Ext.M35.

6. **The points for consideration are :**

“Whether the workmen concerned in the case are entitled to the relief of absorption in the Respondent establishment as claimed?”

### **The Point**

7. The dispute is raised on behalf of 29 workmen whose names and other details are given in the annexure to the schedule of reference. The Petitioner Union has stated that it is espousing the cause of the concerned workmen. The workmen are said to be doing cable work in the Respondent establishment. The respective dates on which the workmen have joined the establishment are given in the annexure to the schedule of reference. Different dates starting from even 1982 are given in the annexure as date of joining the establishment. It is contended in the Claim Statement that though the concerned workmen are working under the so-called Contractor the contract labour system is a camouflage and supervision and administration control was always with the Respondents. Absorption in the service of the Respondents is claimed also on the basis that they have completed more than 480 days of service within a period of 24 calendar months and therefore they are entitled to the benefit of Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act.

8. Swaminathan and Dhanabal workmen concerned in the case have been examined to establish the case. There are also documents proved through these witnesses. The evidence of WW2 who is the Circle Treasurer of the

Petitioner Union is intended only to show that the petitioner has got *locus-standi* to espouse the cause of the workers in question.

9. WW1 has stated in his affidavit that all the 29 workers concerned in the case are employed in Trichy Telecom SSA and are working in different places such as Karur, Aruvankurichi, Varagaranari, Trichy, etc. He has stated that all of them were doing cable and line work before the formation of BSNL, the present establishment. They were directly paid wages by the then Department of Telecom. Two of the workers Gopi and Kumar are said to have been discharging house-keeping work also alongwith cable and line work. WW1 has further stated in the Proof Affidavit that they do not know who the Contractors are and they were not appointed by the so-called Contractors also. Even if there were any such Contractor he must have been appointed recently, it is further stated.

10. WW3, Dhanapal has stated that he was earlier working as casual mazdoor in the Office of the Sub-Divisional Officer Telegraphs, Karur. He stated that he was sponsored by the Employment Exchange and he was taken as casual labour only after an interview on 08.01.1982. According to him, he had completed 480 days of continuous service within a period of 24 calendar months long ago and is to be deemed to have attained permanency as per Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act.

11. What are the documents available in support of the case of the petitioner? Ext.W1 includes some receipts regarding payment of coolie charges. There is one receipt dated 20.10.1999 signed by K. Kumar, one of the workmen involved. Receipts dated 05.11.1999, 02.06.2000, 31.10.2000 and 09.05.2001 are also there. The remaining receipts are of dates after the dispute was raised. Thus it could be seen that these receipts are of late origin and do not substantiate the case that the workman concerned had worked for more than 480 days continuously in the establishment. Even if this is the case they would not be entitled to any relief under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act if they were contract workers. The case that the concerned workman Kumar was working for a long time is not justified by the available evidence.

12. Ext.W2 is said to be payment register in respect of Gopi among others. The receipts are either after the dispute was raised or immediately before it. So the case in respect of Gopi, the workman involved is not established.

13. Ext.W3 is a certificate to the effect that workman including Kumar have been engaged for 18 days in April 2001. Then there is Ext.W4, a certificate issued in favour of one Swaminathan. However, this does not state during which period the workman mentioned therein has been working.

14. Ext.W5 is a communication asking to handover RC Cheque to Kumar. This is also in 2001. Ext.W6 is a letter requesting to permit Kumar and others to stay in the work and accounts section for night watchers. However, this is of 2004, after the dispute was raised. So also Ext.W7, a letter issued by the JTO authorizing Swaminathan, one of the concerned workman to get materials from Stores and also Ext.W8 cable work diagram are of the year 2003, 2004, 2005 etc. These are not of any use in proving the case of the petitioner that the concerned workmen have been working in the establishment for a long time before the dispute was raised.

15. Ext.W13 is a communication of 1982 for recruitment of casual mazdoors. This is relevant in the sense that the name of WW3, Dhanabal appears in the list of mazdoors sponsored by the Employment Exchange, attached to the communication. He is S.No. 56 in the list. The date of recruitment is given as 08.01.1982. So it is clear that he has started to work in the establishment from this date. It is clear from his oral evidence that even now this workman is working in the establishment. There are other documents already discussed also showing that he was continuing with the Respondents. Ext.W14 is the personnel record of employment in respect of WW3. Ext.W15 is certificate by the Sub-Divisional Officer to the effect that Dhanabal had worked in Karur Division from 02.03.1982 to 30.12.1984. Ext.W16 is a certificate stating that he had worked from 01.05.1987 to 17.05.1987. Ext.W17 is a list of the days on which Dhanapal has worked during the period from 20.02.1985 to 08.02.1988. It could be deciphered from all these that he was working continuously. Ext.W18 (series), 119 in number are all issue slips in the name of Dhanapal. It could be seen that materials issued from the Stores were received by Dhanapal. Receipt from August 1998 are seen in the series. There is Ext.W19, the work diary maintained by Dhanapal containing the signature of Junior Telecom Officer who is described as the Controlling Authority. These are of course from 2004 but would show that he was all along there before the dispute was raised and after that also. Thus so far as WW3, Dhanapal is concerned there is sufficient material to show that he had started to work in the establishment from the year 1982 as sponsored by the Employment Exchange and continued to be in the establishment. He was being paid directly by the Respondents. Though there is a case for the Respondents that all the concerned workmen including Dhanapal must be contract labours and there is no direct relationship between them and the Respondents, the documents pertaining to Dhanapal speaks otherwise. So far as other workmen involved in the ID are concerned no evidence is available to support their case of having been in the establishment for a long time before they raised the dispute. None of them are entitled to any relief. However, Dhanapal seems to have been in the establishment and working directly for a long time with the Respondents. There is nothing to show that he was employed by the contractual agency. So the claim in



respect of this workman that the contract is only a camouflage is only to be accepted. He is entitled to be absorbed in the establishment on the basis that he was there for a long time and was doing work which is perennial in nature.

16 There is a contention for the Respondents in the Counter Statement that the Union has no capacity to represent the contract workmen. MW1, the Divisional Engineer examined on behalf of the Respondents has stated during his evidence that the casual labourers could not have become members of the Union. Ext.M3 circular is produced to prove this. MW1 has also stated that the concerned workmen who are not even casual labourers cannot become members of the Union and for this reason the Union is not competent to represent them in this dispute also. The petitioner has examined WW2, the Treasurer of the Union to meet this contention. As seen from his evidence there were earlier 6 Unions among the workmen of the Respondents. However, these Unions got merged with the Petitioner Union. In the Working Committee Meeting of the Union it was decided to espouse the cause of the concerned workmen. The resolution of the Union is marked as Ext.W10. When such a resolution is there the Petitioner Union is quite competent to raise the dispute on behalf of the concerned workmen. So the contention that the Union is not competent to espouse the cause of the workmen will not hold good. The workman who has proved eligibility by establishing that he was working with the Respondent for a long time is entitled to relief.

17. In view of my discussion above the ID is allowed in part. WW3, Dhanabal, S.No. 11 in the annexure to the schedule of reference shall be absorbed and regularized in the service of the Respondents in his then position with effect from the date on which the dispute was raised. He is entitled to the difference in the wages due to him on such absorption. The arrears of wages shall be paid within two months from the date of the publication of the Award. In default, interest at the rate of 6% is payable on the amount, from the date of the Award.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22<sup>nd</sup> March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

**Witnesses Examined:**

For the 1 <sup>st</sup> Party/Petitioner Union	:	WW1, Sri R. Saminathan WW2, Sri K. Srinivasan WW3, Sri M. Dhanabal
For the 2 <sup>nd</sup> Party/Respondent	:	MW1, Sri A. Jayakumar MW2, Sri O. Anbhazhahan

**Documents Marked:**

Ext.No.	Date	Description
Ext.W1	October, November 1999 & June, October 2000 & May 2001 & April, May June 2004	Coolie Charges paid to K. Kumar by A/O Cash in ACG 17
Ext.W2	January to October 2001, July 2002	Payment Register of R. Gopi while working in TRA Section, BSNL, Trichy
Ext.W3	01.05.2001	Working Certificate issued by S. Radhakrishnan, A/O Cash, BSNL Trichy to K. Kumar
Ext.W4	06.11.2002	Working Certificate issued by K. Ramakrishnan, JTO, Sungagate Karur to R. Saminathan
Ext.W5	18.09.2001	Permission letter issued by A/O Cash, BSNL, Trichy to K. Kumar
Ext.W6	06.04.2004 and 30.04.2004	Permission letter issued by A/O Cash to Security to allow K. Kumar to work in W/A Section, BSNL, Trichy
Ext.W7	10.09.2004, 22.09.2004 07.10.2004, 11.10.2004 26.10.2004, 08.11.2004	Letter issued by JTO, SLM authorizing R. Saminathan to get materials from Stores for the discharge to Cable Joint Work

	11.08.2005, 10.01.2006	
Ext.W8	June, July, August, December 2003, 2004 And 2005	Cable work diagram issued by S. Muthukumar, JTO, K. Paramathi, Karur Johnson, JTO Aravakurichi, Satyaraj JTO, K. Parmathi, Karur to R. Saminathan
Ext.W9	-	Annexure to 2 (k) petition
Ext.W10	-	Bye-Laws of the Union
Ext.W11	30/31 October, 2001	Resolution of the Union
Ext.W12	21.03.2006	Copy of the Lok Sabha Admitted provisional Unstarred question Dy. No. 10145 for 19.12.2005 by Sri Ganesh singh regarding regularization of contract workers
Ext.W13	23.06.1982	Intimation sent by the Sub-Divisional Officer, Telegraphs, Karur regarding recruitment of casual mazdoors (Ext.W1)
Ext.W14	07.06.1982	Personal record of employment of muster roll issued by Karur Telegraphs Sub-division (Ext.W2)
Ext.W15	07.06.1984	Certificate issued by the Sub-Divisional Officer, Telephones, Karur regarding number of days worked by M. Dhanabal (Ext.W3)
Ext.W16	xxxx	Certificate issued by the Assistant Engineer, Suburban Exchanges, Trichy regarding number of days worked by M. Dhanabal (Ext.W4)
Ext.W17	21.12.1988	Certificate issued by the Sub-Divisional Officer, Trichy regarding number of days worked by M. Dhanabal (Ext.W5)
Ext.W18	xxxx	BSNL, Trichy issue slips (120 Nos.) (M. Dhanabal) Ext.W6 (series)
Ext.W19	xxxx	Work diary maintained by M. Dhanabal (70 Nos.) Ext.W7 (series)

#### **On the Management's side**

<b>Ext.No.</b>	<b>Date</b>	<b>Description</b>
Ext.M1	24.12.1992	Copy of DoT, New Delhi letter No. 29-18/91-SRT dated 24.12.1992 addressed to CGMR, Calcutta Phones and Endorsement No. E.1/107/Blgs/92-93/3 dated TR-1 the 02.02.1993
Ext.M2	30.03.1985	Office of the Director General Posts and Telegraphs regarding bank order for recruitment of casual labours
Ext.M3	25.07.1989	Letter from Chief General Manager, Telecom, Tamil Nadu Circle, Madras-600002 regarding eligibility of casual labour to become office bearer of the Unions
Ext.M4	-	Copy of Page 137 of Appendix 3 from P&T Manual Vol.III
Ext.M5	-	Copy of Appendix No. 3 – Preservation of Records
Ext.M6	05.11.2001	Letter from BSNL to All Chief General Managers regarding adoption of the existing Appointing Authorities in respect of absorption of Group C and D staff in BSNL
Ext.M7	-	Copy of Appendix 13A at Page 426 of Financial & Hand Book of P&T Rules which deals with Rule-331
Ext.M8	6/23.08.1991	Copy of letter from CGM, Telecom, Chennai to all Subordinate Offices regarding regularization of casual workers in Group "D"
Ext.M9	-	Copy of the agreement entered into between BSNL and M/s Kalimar Constructions
Ext.M10	25.09.1996	Copy of the document for registering BSNL as Principal Employer under CLRA Act
Ext.M11	22.06.1995	Copy of the notification of prescribed procedure to be followed by the department in the appointment of Group "D" employees category

Ext.M12	30.08.2002	Copy of the Model Bill prepared for the Contractor
Ext.M13	28.07.2004	Copy of the license given by Contractor M/s Tamil Nadu Ex-Servicemen Corporation for 2004 and M/s First Man Security Service for the year 2002
Ext.M14	11.11.1988	CGMT/MS No. RET/84-2/85 regarding employment of part-time officials
Ext.M15	17/23.11.1988	CGMT/TN No. RET/84-1/87 regarding (grant of temporary status and regularization) scheme
Ext.M16	10.05.1990	CGMT/NC No. RET/84-1/90 regarding recruitment to the cadre of Group "D" 1990
Ext.M17	January, 1992	CGMT/NC No. RET/84-1/91 regarding regularization of casual labourers with temporary status
Ext.M18	03.02.1993	CGM/TNC No. RET/84-1/91 regarding regularization of temporary status mazdoors under 10 years scheme
Ext.M19	02.04.1993	CGM/TNC No. RET/84-1/91 regarding 10 years regularization of temporary status mazdoors
Ext.M20	19.06.1992	GM/TR Memo No. E-7/7/92-93/85 regarding regularization of casual mazdoors/part time officials who have tendered 10 years service as on 31.12.1991 Appointment Order
Ext.M21	21.09.1992	GM/TR Memo No. E-7/7/92-93/85 regarding regularization of temporary status casual mazdoors who have rendered 10 years of service as on 31.12.1991 and 31.03.1992 Appointment Order
Ext.M22	11.02.1994	GM/TR No. E-7/7/1993-94/7 regarding regularization of temporary status mazdoors who have completed 10 years of service as on 31.03.1994
Ext.M23	04.01.1995	GM/TR No. E-7/7/94-95/3 regarding regularization temporary status mazdoors as on 31.03.1995
Ext.M24	19.01.1996	GM/TR No. E-7/7/94-95/3 regarding regularization of temporary status mazdoors who have completed 10 years of service as on 31.01.1996
Ext.M25	05.02.1997	GM/TR No. E-7/7/94-95/5 regarding regularization of temporary status mazdoors who have completed 10 years of service as on 31.03.1997
Ext.M26	04.05.1998	GM/TR No. E-E1/107/Rlgs/52 regarding regularization of casual labourers with temporary status engaged after imposition of ban orders – furnishing of proposals
Ext.M27	11.04.1996	CGMT/TNC No. EST/30-456/96 regarding duties of restricted cadres, i.e. Phone Mechanic, Telecom Technical Assistant and Sr. Telecom Operating Assistant
Ext.M28	29.09.2000	Letter No. 289-94/98-STN-II regarding regularization of casual labourers to all CGMs Circles/Districts/HoD/IFA's
Ext.M29	02.01.2001	No. BSNL/4/SR/2000 regarding record of discussions in the meeting with three federations
Ext.M30	25.01.2001	GM/TR No. E7/7/2000-2001/13 regarding regularization of casual labourers
Ext.M31	-	Establishment ID No. CBTRY0044776000 with uploaded dated 15.05.2014 regarding electronic challan of EPF Organization, Trichy for M/s Aruvunidhi Engg. Contractor
Ext.M32	-	Establishment ID No. CBTRY0044776000 with uploaded dated 14.08.2014 regarding electronic challan of EPF Organization, Trichy for M/s Aruvunidhi Engg. Contractor

Ext.M33	-	Establishment ID No. CBTRY0044776000 with uploaded dated 02.12.2014 regarding electronic challan of EPF Organization, Trichy for M/s Aruvunidhi Engg. Contractor
Ext.M34	-	Establishment ID No. CBTRY0044776000 with uploaded dated 09.02.2015 regarding electronic challan of EPF Organization, Trichy for M/s Aruvunidhi Engg. Contractor
Ext.M35	-	Establishment ID No. CBTRY0044776000 with uploaded dated 11.08.2015 regarding electronic challan of EPF Organization, Trichy for M/s Aruvunidhi Engg. Contractor.

नई दिल्ली, 10 अप्रैल, 2017

**का.आ. 967.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार, बीएसएनएल और अन्य, इरोड एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 293/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/20/2003-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th April, 2017

**S.O. 967.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 293/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom, BSNL and other, Erode and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/20/2003-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 22<sup>nd</sup> March, 2017

**Present :** K.P. PRASANNA KUMARI, Presiding Officer

#### Industrial Dispute No. 293/2004

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and Two Others and their workman)

#### BETWEEN :

The Circle Secretary  
BSNL Employees Union  
No. 21/10, R.K. Srinivas Apartments  
Bharathiyar 1<sup>st</sup> Street  
Pazhavanthangal  
Chennai-600114

:

1<sup>st</sup> Party/Petitioner Union

#### AND

1. The General Manager  
BSNL, Erode SSA, Gandhi Road  
Erode-639001
  2. The Chief General Manager  
BSNL Tamilnadu Circle  
Anna Salai  
Chennai-600002
- :
- 2<sup>nd</sup> Party/1<sup>st</sup> Respondent
- :
- 2<sup>nd</sup> Party/2<sup>nd</sup> Respondent

**Appearance:**

For the 1<sup>st</sup> Party/Petitioner Union : M/s. K.M. Ramesh, Advocates  
 For the 2<sup>nd</sup> Party/Respondents : Sri D. Simon, Advocate

**AWARD**

The Central Government, Ministry of Labour & Employment vide its Order No. L-40011/20/2003-IR (DU) dated 19.01.2004 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

*“Whether the demand of the Union for absorption of 6 workers (list enclosed) engaged through Contractors by the General Manager, BSNL, Erode to do housekeeping work is justified? If not, to what relief they are entitled to?”*

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID 293/2004 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a Registered Trade Union having substantial number of permanent workmen working in BSNL as its members. The dispute is raised on behalf of workmen working in the Office of BSNL, Erode, SSA. They are doing the work of Housekeeping. These workmen are working directly under the control and supervision of BSNL. They are doing the very same work carried out by the permanent employees of the Department. The work done by them is perennial in nature. The workmen cannot be treated as contract labour but have to be treated as part and parcel of the regular service of the Department. All the workmen concerned in the dispute are Class-IV employees for which sponsorship from Employment Exchange is not required. The work performed by them are essential. The so-called contract system is a sham one. The overall control of the workmen including administrative control remained with the Department. The alleged Contractors are regular staff of the Department. They engage the workers, supervise the work, take their attendance and claim and pay their wages. There are regular sanctioned posts for regularizing the workmen concerned in the case. The BSNL is an establishment as per Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. The concerned workmen having completed 480 days of work in a period of 24 calendar months should be made permanent. An Award may be passed holding that the workmen are entitled to regular absorption in the service of the establishment from the date of their joining, together with continuity of service and attendant benefits.

4. The Respondent has filed Counter Statement contending as below:

The petitioner has no locus-standi to espouse the cause of persons who are not employees of BSNL. The petitioner is not a recognized union. The subject-matter of the claim does not relate to the service conditions of any of the employees of BSNL. As such the claim is not maintainable. The Contractors have not been impleaded as parties. So the dispute is bad for non-joinder of necessary parties. It is not correct to state that the concerned workmen are doing work of the same nature as done by regular employees, that the work is perennial in nature, that there is direct control and supervision by the Respondents, that the Contractors are the Officers of BSNL, etc. Though the petitioner has admitted that the workmen are contract labourers they are described as casual labourers doing the work of Class-IV employees. These are mutually inconsistent pleas. In the case of contract labourers there is no supervision or control by the principal employers. The petitioner having admitted that the concerned workmen are contract labourers, the question of their absorption or regularization do not arise. The Respondents have not been prevented from engaging contract labour. The Respondents do not know about the details of the concerned workmen. It is the Contractors who do the work and they only know about the details of their workmen. If the workmen have worked for more than 480 days they are to claim permanency with the Contractors and not with the Respondents. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence WW1, WW2 and MW1 and documents marked as Ext.W1 to Ext.W8 and Ext.M1 to Ext.M12.

6. **The points for consideration are :**

“Whether the workmen concerned in the case are entitled to the relief of absorption in the Respondent establishment as claimed?”

**The Point**

7. The petitioner union has raised the dispute on behalf of 6 workmen whose names and other details are given in the annexure to the schedule of reference. According to the petitioner the concerned workmen have been working under

the Department of Telecom and subsequently under BSNL. Though they were working under the so-called contract system the contract is said to be a sham one. It is the case of the petitioner that all the workmen have been directly under the control and supervision of the Respondent establishment and earlier under the Department of Telecom. The contractors are said to be regular employees of BSNL. The petitioner has claimed that all the 6 workmen are entitled to be absorbed in the establishment, the contract being sham and also because they are entitled to permanent status under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act.

8. One of the workmen has been examined as WW1. She has stated in the Proof Affidavit filed by her that her evidence is on behalf of the other workmen concerned in the case also. According to her all the workmen have completed 480 days of continuous service in a period of 24 calendar months and should have been conferred with permanent status. She has stated that herself or the other workmen do not even know who the Contractor is. She has further stated that even if there is any Contract system it is only sham and nominal. She has given the names of the Officers who are said to have extracted work from her and the other workmen, in the Proof Affidavit filed by her.

9. Documents are produced on behalf of WW1 to establish the case that she has been working for the Respondents for a long time. Attendance particulars of WW1 starting from the year 1993 are produced as Ext.W2 (series). These documents give the details of the dates on which WW1 has reported for duty, the dates on which she was absent, the name of the person who had worked on the days of her absence etc. The wages payable to her are also given in some of the documents. Year-wise details of the Attendance of WW1 are available from these documents. It contains endorsement by the Officers of the Respondent establishment also. Initially wages were seen calculated on hourly basis. For example for the month of August 1993 as per the calculation shown, she has worked for 60 hours at the rate of Rs. 5.30/- per hour the Superintendent of Central Telegraph Officer approved payment of Rs. 342/- as wages for 60 hours. Such calculations are found at the end of all the months. Thus it could be seen that attendance particulars of WW1 were maintained at the office of the Respondents itself. Such details upto March 2001 are available in Ext.W2 (series). There is no case for the Respondents that these are not genuine documents. There is not even a suggestion during cross-examination of WW1 that these are not genuine.

10. WW1 has stated during her examination that she was is doing the job of housekeeping for the Respondents. This claim of WW1 is also not disputed. Thus it could be seen that WW1 had been working as Housekeeper for the Respondents at least from the year 1993 and continues to work also.

11. It is the case of the Respondents that the concerned workmen were working on contract basis and there was never any employer-employee relationship between the concerned workmen and BSNL or the erstwhile Department of Telecom. It is of course stated in the Claim Statement that the concerned workmen were working under a contract system. However, at the same time the petitioner has put forth a case that the contract is sham and nominal. It is even stated that the Contractors are all employees of the department and the workmen were not even aware who the Contractors are.

12. MW1, the Asstt. General Manager of Erode SSA examined on behalf of the Respondents has stated in evidence that there was ban on engaging casual labour directly and it was only on contract basis workers were being engaged. To substantiate this, an agreement for executing housekeeping work also is produced and marked as Ext.M9. However, this is of the year 2005. The documents pertaining to the previous period are not produced by the Respondents. In any case it is clear from the evidence that in spite of any agreement for housekeeping work that might have been executed by the Respondents at different periods, WW1 continued to do the work of housekeeping in the establishment at least from the year 1993. It is clear that under the guise of contract system the workmen were being made to work on a lower scale of wages without making them permanent. In such case the contract has to be treated as sham.

13. So far as the other workmen are concerned the petitioner has not produced any documents to show that they have ever worked in the establishment or are still working. WW1 has admitted during her examination that documents in respect of other workmen are not available. So the claim of the other workmen for absorption has to be rejected.

14. The counsel for the Respondents have referred to the decision of the Apex Court in Uma Devi's case reported in 2006 4 SCC 1 to contend that there cannot be regularization of the workmen as they were engaged without following due process of selection as envisaged in constitutional scheme. However, the dictum laid down in the Uma Devi's Case has been subsequently explained in the case MAHARASHTRA STATE ROAD TRANSPORT CORPORATION VS. CASTERIBE RAJYA PARIVAHAN KARMACHARI SANGHATANA reported in 2009 2 SCC (L&S) 513. It has been held in the above decision that the powers of the Industrial and Labour Courts were not under consideration in Uma Devi case and issues like one pertaining to unfair labour practice were not at all referred to, considered or decided in Uma Devi case. Unfair labour practice on the part of the employer in engaging them as Badlis, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent employees as provided in Item-6 of schedule IV and the power of Industrial and Labour Courts under Section-30 of the Act did not fall for adjudication or consideration before the Constitution Bench, it was held. It was

also held that Uma Devi does not denude the Industrial and Labour Courts of the statutory power to order permanency of the workers who have been victims of unfair labour practice on the part of the employer.

15. MW1 has stated that Ext.M1 is the notification which would show that BSNL Employees Union is given recognition only to represent the matters of its own members. According to the Respondent the Petitioner Union has no locus-standi to raise the dispute. WW2, an official of the Union has been examined to meet this case. Ext.W6 the bye-laws of the Union and Ext.W7 the resolution passed by the Union on 30<sup>th</sup> and 31<sup>st</sup> October, 2001 are marked through this witness. WW2 has stated that as per the bye-laws of the Union it is entitled to espouse the cause of BSNL employees in general. Apart from that it has decided to espouse the cause of all workmen who had not been regularized, by Ext.W7 resolution. So the contention that the Union is not competent to espouse the cause of the workmen will not hold good.

In view of the above discussion WW1 is entitled to be absorbed in the establishment as regular workman. Accordingly an Award is passed as below:

WW1 shall be deemed to have been absorbed in the service of the Respondents in the then position with effect from the date on which the dispute was raised. WW1 shall be entitled to the difference in the pay consequent to such absorption. The amount is payable to her within 2 months from the date of the publication of the Award. In default she is entitled to interest @ 6% per annum on the amount from the date of the Award.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22<sup>nd</sup> March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

**Witnesses Examined:**

For the 1<sup>st</sup> Party/Petitioner Union : WW1, Sri P.Gunaseeli  
WW2, Sri K. Srinivasan

For the 2<sup>nd</sup> Party/Respondents : MW1, Sri V. Ponnusamy

**Documents Marked:**

**On the petitioner's side**

Ex.No.	Date	Description
Ext.W1	-	Duty Memo
Ext.W2	-	Attendance Particulars Vol. I to XI
Ext.W3	-	Wage receipt
Ext.W4	-	Annexure to 2(K) petition
Ext.W5	-	Part Time employment of Gunaseeli
Ext.W6	-	Bye-laws of the Union
Ext.W7	30/31 Oct'2001	Resolution of the Union
Ext.W8	21.03.2006	Lok Sabha Admitted Provisional Starred Question Dy. NO.10145 for 19.12.2005 by Shri Ganesh Singh regarding regularization of contract Workers.

**On the Management's side**

Ext.No.	Date	Description
Ext.M1	24.12.1992	Copy of DOT, New Delhi letter No. 29-18/91-SRT dated 24.12.1992 addressed to CGMR, Calcutta Phones and Endorsement No. E.1/107/Blgs/92-93/3 dated TR-1 the 02.02.1993
Ext.M2	30.03.1985	Office of the Director General Posts & Telegraphs regarding ban order for recruitment of casual labours
Ext.M3	25.07.1989	Letter from Chief General Manager, Telecommunications, Tamil Nadu Circle, Madras-600002 regarding eligibility of casual labour to become office bearer of the Unions

Ext.M4	-	Copy of Page 137 of Appendix 3 from P&T Manual Vol.III
Ext.M5	-	Copy of Appendix No. 3 – Preservation of Records
Ext.M6	05.11.2001	Letter from BSNL to All Chief General Managers regarding adoption of the existing Appointing Authorities in respect of absorption of Group C and D staff in BSNL
Ext.M7	-	Copy of Appendix 13A at Page 426 of Financial & Hand Book of P&T Rules which deals with Rule-331
Ext.M8	-	Copy of letter from CGM, Telecom, Chennai to all Subordinate Offices
Ext.M9	28.03.2005	Agreement for executing House keeping work as specie in the Tender notice No.G.28/HK-Tender/GMO, Erode/2005-2006
Ext.M10	20.12.2002	Certificate of Registration Form-II )See Rule-18 (1)
Ext.M11	14.07.2005	Certificate of Registration Contract Labour (Regulation and Abolition ) Act,1970 and Central Rules,1971-Grant-reg
Ext.M12	22.06.1995	Copy of the document of prescribed procedure to be followed by the Department in the appointment of Group “D” employees category.

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 968.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, मुंबई के पंचाट (संदर्भ संख्या 24/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-30011/11/2007-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 11th April, 2017

**S.O. 968.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2007) of the Central Government Industrial Tribunal/Labour Court-1, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and their workman, which was received by the Central Government on 03.04.2017.

[No. L-30011/11/2007-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

**Present :** JUSTICE SURENDRA VIKRAM SINGH RATHORE, Presiding Officer

**REFERENCE NO.CGIT-1/24 OF 2007**

#### Parties:

Employers in relation to the management of O.N.G.C.

**And**

Their workmen

#### Appearances:

For the Management : None present.  
 For the workman : Mr.Prakash Dalvi, President of the Union.  
 State : Maharashtra

Mumbai, dated the 3rd day of March, 2017



**AWARD**

1. As per the Schedule of this Reference, the following dispute was referred to this Tribunal.  
“Whether the demand of the union for extension of Golden Jubilee Gift/Incentive as enunciated in IOM dated 18/8/2006 an IOM dated 8/9/2006 to the Tenure Based/Term Based employees at par with regular employees (having put in only one year service) is legal, proper and just? If so, to what relief the Tenure Based/Term Based employees of ONGC are entitled to?”
2. The case was taken up in the Lok Adalat.
3. Parties have filed Settlement and as per the Settlement the Union has submitted that it did not want to prosecute the above Reference No. 24 of 2007.
4. In view of the above Settlement this reference is decided in terms of the settlement which shall form a part of this Award.
5. Order accordingly.

JUSTICE S.V. RATHORE, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 969.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स टोटल ऑयल इण्डिया प्राइवेट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ संख्या 37/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-30011/27/2013-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 11th April, 2017

**S.O. 969.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/2013) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Total Oil India Pvt. Ltd. and their workman, which was received by the Central Government on 03.04.2017.

[No. L-30011/27/2013-IR (M)]

RAJESH KUMAR, Under Secy.

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI****PRESENT : M.V. DESHPANDE, Presiding Officer****REFERENCE NO. CGIT-2/37 of 2013**

**EMPLOYERS IN RELATION TO THE MANAGEMENT OF  
TOTAL OIL INDIA PVT. LTD.**

The Vice President  
Total Oil India Pvt. Ltd.  
Plot No.26, TTC Industrial Area  
Mahape MIDC  
Post Koper Khairne  
Navi Mumbai 400 710.

**AND****THEIR WORKMEN**

The General Secretary  
M/s. Total Oil Employees Union  
C/o. Yashwant Patil

Room No.560,  
Mahape Village Post MBP  
Navi Mumbai 400 710.

**APPEARANCES :**

FOR THE EMPLOYER : Mr. N.R. Patankar, Advocate

FOR THE UNION : Mr. B. K. Hegde, Advocate

Mumbai, dated the 22<sup>nd</sup> February 2017.

**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No.L-30011/27/2013-IR (M), dated 18.06.2013 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

*“Whether the demand of Total Employees Union for regularization as a permanent employee of Sh. Shataram Yashwant Vane, Shri Deepak Bhaskar Kamble, Shri Shankar Shivram More, Shri Govind Ram Bhagat Shri Waman Narayan Jadhav, Shri Mangesh Bhargav Bait, Shri Surendera Shankar Jadhav, Shri Pradeep Kanu Mote in the establishment of M/s. Total Oil India Pvt. Ltd., Mahape MIDC Navi Mumbai 400 709 is legal, just and proper, if so what relief these workmen concerned are entitled to ?”*

2. After receipt of the reference, both parties were served with notice of the Reference. The second party union appeared through its legal representative and filed Statement of Claim at Ex-6. Matter was Pending hearing.

3. Meanwhile today, i.e. on 22.02.2017 Second party Union filed application at Ex-19 stating that they have arrived at amicable settlement and prayed to dispose of the reference in view of the settlement. Orders were passed on Ex-19. Accordingly, the reference is disposed of as settled. Hence the order:

**ORDER**

In view of the settlement Ex-19, Reference stands dismissed.

Date: 22.02.2017

M. V. DESHPANDE, Presiding Officer

**MEMORANDUM OF SETTLEMENT**

[ Under Section 2(p) read with Section 18 (1) of the Industrial Disputes Act, 1947]

**Representing the Employer:**

Shri Prakash Jonnalagadda  
Total Oil India Pvt. Ltd.  
3<sup>rd</sup> Floor, Leela Galaria  
Andhri-Kurla Road,  
Andheri (E)  
Mumbai- 400 059

**Representing the Workers:**

1. Shri Rajan Raje,  
President  
Dharmarajya Kamgar  
Karmachari Mahasangh (DKKM),  
Ground Floor, Ravi Darshan Society,  
Off Ram Maruti Road,  
Near Bedekar Hospital, DNS Bank,  
Thane (W) – 400602.
2. Shri Ramakant Nevrekar  
Vice President- DKKM.
3. Shri Mahesh Singh Thakur  
General Secretary- DKKM.

4. Shri Uttam Salunkhe  
Treasurer- DKKM
5. Shri Shankar Shivram More  
Abdul Mullah Chawl,  
Sai Hill T.P. Road,  
Near Saraswati Vidya Mandir, Bhandup  
Mumbai- 400 078.
6. Shri Govind Ram Bhagat  
Sector-5, Room No. 62  
Kopar Khairne  
Navi Mumbai- 400 710.
7. Shri Waman Narayan Jadhav  
Samrat, Ashok Nagar,  
Govandi Municipality Zopadpatti No.- 32-3/4  
Govandi, Mumbai- 400 088.
8. Shri Pradeep Kanu Mote  
Ratna Deep Chawl  
Mukund Nagar  
P.I. Lokhande Marg,  
Chembur (W),  
Mumbai- 400 089.
9. Shri Surendra Shankar Jadhav  
Room No- 63-1/1, Bhim Nagar,  
Ravivashi Sangh,  
Jaherbai Wadia Road, Parel  
Bhiowada,  
Mumbai- 400 012.
10. Shri Shantaram Yeshwant Vane  
Arun Nivas Chawl  
Chawl No.02, Room No: 03,  
Sabegaon, Diba  
Distt. Thane.
11. Shri Deepak Kamble  
Sai Sadan, Room No:-4  
Near Shrikant Gym, Gansoli  
Navi Mumbai- 400 701.
12. Shri Mangesh Bhargav Bait,  
Arun Patil Chawl,  
Chawl No: 02, Room No: 07,  
Sabegaon, Diva  
Distt.- Thane.

#### **WORKERS IN PERSON**

#### **SHORT RECTICAL OF THE CASE**

Shri/s. Shantaram Yeshwant Vane, Deepak Baskar Kamble, Mangesh Bhargav Bait, Shankar Shivram More, Shri Govind Ram Bhagat, Shri Waman Narayan Jadhav, Shri Pradeep Kanu Mote & Shri Surendra Shankar Jadhav, (hereinafter referred to as :the workers”) had filed Complaint of unfair labour practice being Complaint (ULP) No. 186 of 2011 before the Hon’ble Industrial Court, Thane under the provisions of the Maharashtra Recognition of Trade Union & Prevention of Unfair Labour Practices Act, 1971 hereinafter referred to as “MRTU & PULP Act, 1971”) seeking permanency in the employment of the Total Oil India Pvt. Ltd (hereafter referred to as “the Company”) in its factory at Plot No. 26, TTC Industrial Area, MIDC, Mahape, Navi Mumbai- 400 709. Shri Shankar Shivram More, Shri Govind Ram Bhagat, Shri Waman Narayan Jadhav, Shri Pradip Kanu Mote & Shri Surendra Shankar Jadhav were working as Casual Workers in the premises of the Company at Mahape from 01.04.1993, 07.20.1995, 01.05.1993, 15.01.1995 & 11.05.1994 respectively (hereinafter referred to as the “**Five Workers**”) and Shri/s. Shantaram

Yeashwant Vane, Deepak B Kamble and Mangesh B Bait were Contract Labourers employed by the Contractor i.e. M/s. Hygiene Enterprises engaged by the Company for rendering House Keeping services to the Company. The Company opposed the said Complaint by making an Application contending that the Company being a 'controlled industry' within the meaning of and for the purposes of Section 2(a)(1) of the I.D. Act 1947 the Central Government is the "Appropriate Government" and therefore, the Complaint filed by the workers under the MRTU & PULP Act, 1971 which is a State Act is not maintainable and no such Complaint under the State Act can at all be filed by the workers against Company and prayed for dismissal of the said Complaint. In view the said Application, the workers withdrew their Complaint (ULP) No. 186 of 2011 before the Hon'ble Industrial Court, Thane and thereafter same demand was raised by the Total Oil Employees Union (hereinafter referred to as "TOEU") in the office of The ALC and Conciliation Officer (Central). The company opposed the said demand. During the pendency of the said matter three workers, namely Shri/s. Shantaram Yeshwant Vane, Deepak Baskar Kamble and Mangesh Bhargav Bait (hereinafter referred to as the "**Three Workers**") approached the Company and requested for an amicable settlement in the matter. The three workers expressed their desire to have employment in the services of the Company in lieu of all their issues, grievances, demands etc. including their demand, if any, towards wages, back-wages, wage differences, gratuity, etc. and accordingly a settlement dated 12.12.2012 was executed between the Company and the aforesaid three workers before the Office of the Assistant Labour Commissioner and Conciliation Officer (central) and the matter with regard to the three workers was closed as settled. The said three workers were taken in the permanent employment of the Company w.e.f. 12.12.2012 under 3 different settlements. Copies of the said settlement are annexed hereto as **Annexure "A" (Collectively)**.

The conciliation proceedings with regard to the demand of other 5 workers resulted in the failure which further resulted in Reference No. CGIT-2/ 37 of 2013 which is pending before the Central Government Industrial Tribunal No. 2 at Mumbai. Although the demand of 3 workers was settled before the Office of the ALC and Conciliation Officer (Central), the name of the three workers were also inadvertently included in the above mentioned Reference.

**Dharmarajya Kamgar Karmachari Mahasangh**, hereinafter referred to as the "Union" which has Nine (9) permanent workman as their member, is now representing the aforesaid Eight (8) workers in the above workers in the above mentioned reference.

During the pendency of the Reference before CGIT, it was observed by the Company that as per the record of age proof available with the Company one of the workers namely **Mr. Waman Jadhav** had already attained superannuation on 31.05.2008 and accordingly the Company issued letter dated 05.12.2015 to Mr. Waman Jadhav regarding his retirement from the services of the Company and the same was accepted by Mr. Waman Jadhav. The Company also made a payment of **Rs. 4,62,872/- (Rupees Four Lakh Sixty Two Thousand Eight Hundred & Seventy Two Only)** towards Full & Final Settlement including EXgratia to Mr. Waman Jadhav. A copy of the letter dated 05.12.2015 issued to Mr. Waman Jadhav is annexed hereto & marked as **Annexure-"B"**.

During the pendency of the aforesaid Reference the aforesaid 4 (I.e. 4 balance workers after one who came to be superannuated as above) workers have approached the Company, considering the position that it would have to spend its man-hours as well as money on the litigation initiated by the workers/ the Union in their respect, gave positive response to the request of the 4 workers without prejudice to the Company's rights and contentions in the matter. Although there was no employer-employee relation between the Company and the workers, in view of the position that the workers and their representatives had already moved the machinery under the I.D. Act, 1947 (Central), the Company without prejudice to its contentions in the matter and be on the safer side decided to record the terms of Agreement between the Company and the workers by signing this Settlement under Section 2(p) of the I.D. Act, 1947. The parties thereafter discussed the matter at length with the workers as well as their representative and arrived at an amicable settlement on the following terms and conditions.

#### **TERMS OF SETTLEMENT**

##### **It is agreed by and between the parties as under:**

1. The Company, without prejudice to its rights and contentions in the matter and for the reasons already set out in the Short Recital of the case of this Settlement and purely on humanitarian ground will give permanent employment to Mr. Shankar S More, Mr. Govind R Bhagat, Mr. Pradip K Mote, & Mr. Surendra S Jadhav w.e.f. 01.04.1993, 07.10.1995, 15.01.1995, & 11.05.1994 in the services of the Company.
2. The Company, without prejudice to its rights and contentions will make payment as specifically mentioned in **Annexure- "C"** subject to tax and statutory deductions as applicable to Shri Pradip K Mote, Shri Surendra S Jadhav and Shri Waman Jadhav respectively towards back wages, ex-gratia, leave encashment from their date of joining till September 2016 and/or date of retirement whichever is earlier in full and final settlement of all their claims, disputes, demands, grievances, etc. if any, against the Company, statutory, monetary or otherwise in respect of their rendering services on the premises of the Company during any/entire tenure of their such working including their claims,

disputes, employment permanency, etc. in the service of the Company including their claims, disputes, demands, grievances, etc. statutory, monetary or otherwise, if any, against the Company including their claims/ demands, if any, towards earned wages, back-wages, differences in wages, Bonus, LTA, ex-gratia, etc. including their demands, grievances, etc. raised on their behalf in the proceedings before the Central Government Industrial Tribunal in Reference No. CGIT-2/ 37 of 2013 including issues incidental thereto and/or off-shoots arising out of the same.

3. Although the 3 workers namely Shri Shantram Vane, Shri Deepak B Kamble and Shri Mangesh B. Bait were already taken in the employment of the Company w.e.f. 12.12.2012, the Company has purely on humanitarian ground agreed to make additional payment of **Rs 50,000/-** each to the 3 workers towards ex-gratia in full and final settlement of all their claims, disputes, demands, grievances etc. if any, against the Company, statutory, monetary or otherwise in respect of their rendering services on the premises of the company during any/entire tenure of their such working including their claims, disputes, demands, grievances, etc. if any, for reinstatement or re-employment, employment, permanency etc in the service of the Company including their claims, disputes, demands, grievances, etc statutory monetary or otherwise, if any against the Company including their claims, demands, if any, towards ex-gratia, including their demands, grievances, etc raised on their behalf in the proceedings before the Central Government industrial Tribunal in Reference No. CGIT-2/ 37 of 2013 including issues incidental thereto and/or off-shoots arising out of the same.

4. The workers mentioned above state that they have no claims, disputes, demands, grievances etc. If any, against the Company and/or the Contractor, statutory, monetary or otherwise in respect of their rendering services on the premises of the Company during any/entire tenure of their such working including their claims, disputes, demands, grievances, etc. if any, for reinstatement or re-employment, employment, permanency, etc. In the service of the Company including their claims, disputes, demands, grievances etc. Statutory, monetary or otherwise, if any, against the Company and/or the Contractor including their claims/demands, if any, towards leave encashment, earned wages, back-wages, differences in wages, etc including their demands, grievances, etc. raised on their behalf in the proceedings before the CGIT in Reference No. CGIT-2/ 37 of 2013 including issues incidental thereto and/or off-shoots arising out of the same.

5. The Union & the workers covered under this Settlement as also Mr. Waman Jadhav who is already superannuated on attaining the age of superannuation agree that in view of this Settlement they will not initiate, file or pursue, {either by themselves (individually or jointly) and/or through the Union Party to this Settlement and/or any Union}, any litigation, proceedings, cases etc against the Company in respect of their rendering services on the premises of the Company and/or regarding superannuation of Mr. Waman Jadhav and/or any benefits, service conditions, amounts, etc, applicable/received by them during their working on the Company's premises and/or for/during any period whatsoever. The workers and their union representatives withdraw all the allegations, insinuations, submissions, claims, etc, made by them, by themselves (individually as well as jointly) or through Union/any other Union against the Company in the correspondence addressed by them to the Company and/or to any of the Company's Officer/s and/or to any Authority, statutory or otherwise.

6. The Union & the workers mentioned above have no grievance, of whatsoever nature against the Company nor have any claim for the past period any count.

7. The workers covered under this Settlement as also the Union declare and undertake that immediately on signing of this Settlement they will make necessary Application before the Hon'ble Tribunal in the pending Reference before CGIT, Mumbai i.e. Reference No. CGIT-2/ 37 of 2013 placing a copy of this Settlement before the Hon'ble Tribunal for disposal of the said Reference in terms of this Settlement.

8. The workers namely Shri Shankar S. More, Shri Govind R. Bhagat, Shri Pradip K. Mote & Shri Surendra S. Jadhav will sign Appointment Letters accepting permanent employment in the Company and the terms & conditions thereof with effect from the date mentioned therein. The parties agree that for no purpose this Settlement will be treaded or referred to as Precedent by anybody.

9. The 5 workers namely Shri Shankar S. More, Shri Govind Ram Bhagat, Shri Waman Narayan Jadhav, Shri Pradip K. Mote & Shri Surendra Shankar Jadhav who are covered under this Settlement have given an undertaking to the Company authorizing the Company to deduct 5 % of their back wages as specifically mentioned in **Annexure "C"** for the period from 1997 to 2014 and have authorized the Company to remit the same to the Union i.e. **"Dharmarajya Kamgar Karmachari Mahasangh"** through a consolidated cheque along with statement containing details of the said individual wages.

10. The parties agree that this Settlement has been arrived at as a package deal between the parties and for no purpose it will be construed, interpreted, implemented or understood in a piecemeal manner.

FOR & ON BEHALF OF THE COMPANY	FOR & ON BEHALF OF WORKERS
Prakash Jonnalagadda CEO & Executive Director	Rajan Raje President- DKKM
Sirhans Pehin, Vice President- Operations & Supply Chain	Ramakant Neverkar Vice President- DKKM
M. Balachandran Head- Operations (Mahape)	Mahesh Singh Thakur General Secretary- DKKM
Nimish Joshi Manager- IR & Administration	Uttam Salunkhe Treasurer- DKKM
WITNESSES	Shankar S More WORKER IN PERSON
	Govind R. Bhagat WORKER IN PERSON
	Waman N Jadhav WORKER IN PERSON
	Pradeep Kanu Mote WORKER IN PERSON
	Surendra S Jadhav WORKER IN PERSON

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 970.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सेसा गोवा लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ संख्या 4/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-29011/29/2008-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 11th April, 2017

**S.O. 970.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 4/2009) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Sesa Goa Ltd. and their workman, which was received by the Central Government on 03.04.2017.

[No. L-29011/29/2008-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

**PRESENT :** M.V. DESHPANDE, Presiding Officer

#### REFERENCE NO. CGIT-2/4 of 2009

EMPLOYERS IN RELATION TO THE MANAGEMENT OF  
SESA GOA LIMITED

The Managing Director  
M/s. Sesa Goa Ltd.  
Sesa Ghor, Patto Plaza  
Patto, Panaji  
Goa 403 001.

**AND**

THEIR WORKMEN

The General Secretary  
United Mine Workers Union  
G-5, Machado Apartment  
Tisk Ponda,  
Goa.

**APPEARANCES:**

FOR THE EMPLOYER : Mr. G.K. Sardesai, Advocate.  
FOR THE UNION : Mr. P. Gaonkar, Representative.

Mumbai, dated the 22<sup>nd</sup> February, 2017

**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No.L-29011/29/2008-IR (M), dated 21.01.2009 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

*“Whether the action of the management of M/s. Sesa Goa Ltd., in refusing employment to Shri Shailesh Ankush Shetgaonkar, Dumper Operator w.e.f. 1/3/2008 who has allegedly completed 240 days in employment is legal and justified? To what relief the workman is entitled for ?”*

2. After receipt of the reference, both parties were served with notice of the Reference. The second party union appeared through its legal representative and filed Statement of Claim at Ex-6. First party Management resisted the statement of claim of second party by filing their written statement at Ex-10. Issues were framed by my Ld. Predecessors at Ex-12. Both parties led their evidence and matter was fixed for filing Written Arguments.

3. Meanwhile today, i.e. on 22.02.2017 both parties filed joint purshis at Ex-46 stating that they have arrived at amicable settlement and prayed to dispose of the reference in view of the settlement filed at Ex-45. Orders were passed on Ex-45 & Ex-46. Accordingly, the reference is disposed of as settled. Hence the order:

**ORDER**

In view of the settlement Ex-45, Reference stands dismissed.

Date: 22.02.2017

M.V. DESHPANDE, Presiding Officer

**Ex-45**

**MEMORANDUM OF SETTLEMENT UNDER SECTION 2 (P) OF THE INDUSTRIAL DISPUTES ACT, 1947**  
**BETWEEN THE MANAGEMENT OF M/S. SESA GOA LIMITED AND THEIR WORKMAN**  
**SHRI SHAILESH SHETGAONKAR**

**NAMES OF THE PARTIES TO THE SETTLEMENT****REPRESENING MANAGEMENT**

M/s. Sesa Goa Ltd.

**WORKMAN**

Shri Shailesh Shetgaonkar

**SHORT RECITAL OF THE CASE**

The contract of employment of Mr. Shailesh Shetgaonkar was a fixed term employment and has ended on its expiry.

The workman Mr. Shailesh Shetgaonkar thereafter raised an Industrial Dispute and the said dispute was referred to the Central Government Industrial Tribunal for adjudication. The said matter was registered as Ref.CGIT-2/4 of 2009.

During the pendency of the proceedings before the Tribunal, Mr. Shailesh Shetgaonkar approached the management and requested for a settlement.

After prolonged and protracted discussion, the parties finally arrived at a settlement. The terms of which are as under:

**TERMS OF SETTLEMENT**

1. The Management agrees to pay Mr. Shailesh Shetgaonkar a sum of Rs.50,000 (Fifty thousand only) in full and final settlement of all his claims.

2. Accordingly the workman Mr. Shailesh Shetgaonkar agrees to accept the payment and not to pursue any dispute raised individually or through any union before any Tribunal, Court, Authority or Forum and agrees that in the event of such dispute being raised that the same shall be treated as withdrawn/ settled.

3. The parties further agrees that in view of the above terms the Ref.No.CGIT-2/4 of 2009 stands withdrawn and treat the same as settled.

#### SIGNATORIES TO THE SETTLEMENT

Representative Employer

For Concerned workman

Sd/-

Sd/-

(S. Venkataraman)

(General Secretary)

Sd/-

United Mine Workers Union

(Joy Alfonso )

#### Witnesses

1. Sd/- (Suraj Naik)

2. Sd/- (Melroy Moura)

Dated : 21.02.2017

Panaji- Goa

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 971.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सेसा गोवा लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ संख्या 57/2011) का प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-29011/12/2011-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 11th April, 2017

**S.O. 971.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 57/2011) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Sesa Goa Ltd. and their workman, which was received by the Central Government on 03.04.2017.

[No. L-29011/12/2011-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

**PRESENT :** M.V. DESHPANDE, Presiding Officer

#### REFERENCE NO. CGIT-2/57 of 2011

EMPLOYERS IN RELATION TO THE MANAGEMENT OF  
SESA GOA LIMITED

The Managing Director  
M/s. Sesa Goa Ltd.  
Sesa Ghor, Patto Plaza  
Patto, Panaji  
Goa 403 001.

**AND**



**THEIR WORKMEN**

The General Secretary  
United Mine Workers Union  
G-5, Machado Apartment  
Tisk Ponda,  
Goa.

**APPEARANCES:**

FOR THE EMPLOYER : Mr. G.K. Sardesai, Advocate.

FOR THE UNION : Mr. P. Gaonkar, Representative.

Mumbai, dated the 22<sup>nd</sup> February, 2017

**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No.L-29011/12/2011-IR (M), dated 14.11.2011 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

*“Whether the action of the management of M/s. Sesa Goa Ltd., Goa in imposing the punishment to revoker from the wages of S/Shri Ajit J. Velip and Lala Gaonkar for the damage caused to company property is legal and justified? What relief the workmen concerned are entitled to ?”*

2. After receipt of the reference, both parties were served with notice of the Reference. The second party union appeared through its legal representative and filed Statement of Claim at Ex-6. First party Management resisted the statement of claim of second party by filing their written statement at Ex-11. Issues were framed by my Ld. Predecessors at Ex-13. After completion of recording evidence by the Union, the matter was fixed for recording evidence by management.

3. Meanwhile today, i.e. on 22.02.2017 both parties filed joint purshis at Ex-21 stating that they have arrived at amicable settlement and prayed to dispose of the reference in view of the settlement filed at Ex-20. Orders were passed on Ex-20 & Ex-21. Accordingly, the reference is disposed of as settled. Hence the order:

**ORDER**

In view of the settlement Ex-20, Reference stands dismissed.

Date: 22.02.2017

M.V. DESHPANDE, Presiding Officer

**Ex-20**

**MEMORANDUM OF SETTLEMENT UNDER SECTION 2 (P) OF THE INDUSTRIAL DISPUTES ACT, 1947**  
**BETWEEN THE MANAGEMENT OF M/S. SESA GOA LIMITED AND THEIR WORKMAN**  
**SHRI LALA GAONKAR & SHRI AJIT VELIP**

**NAMES OF THE PARTIES TO THE SETTLEMENT****REPRESENING MANAGEMENT**

M/s. Sesa Goa Ltd.

**WORKMAN**

Shri Lala Gaonkar and  
Shri Ajit Velip

**SHORT RECITAL OF THE CASE**

The matter of alleged illegal deduction towards the damages arising out of the accident occurred at the mines is pending before the Central Government Industrial Tribunal for adjudication. The said mater was registered as Ref.CGIT-2/57 of 2011.

During the pendency of the proceedings before the Tribunal, Mr. Lala Gaonkar and Mr. Ajit Velip approached the management and requested for a settlement.

After prolonged and protracted discussion, the parties finally arrived at a settlement. The terms of which are as under:

**TERMS OF SETTLEMENT**

1. The Management agrees to refund an amount of Rs.23,450/- to Mr.Lala Gaonkar & Rs.50,350/- to Mr. Ajit Velip (after deducting Rs.4,550/- towards Mr. Lala Gaonkar and Rs.9,650/- towards Mr. Ajit Velip) from the amount deducted by the management in full and final settlement of all their claims.
2. Accordingly the workman Mr. Lala Gaonkar and Mr. Ajit Velip agrees to accept the payment and not to pursue any dispute raised individually or through any union before any Tribunal, Court, Authority or Forum and agrees that in the event of such dispute being raised that the same shall be treated as withdrawn/ settled.
3. The parties further agrees that in view of the above terms the Reference registered as No.CGIT-2/57 of 2011 stands settled.

**SIGNATORIES TO THE SETTLEMENT**

Representative Employer

For Concerned workman

Sd/-

Sd/-

(S. Venkataraman)

(Lala Gaonkar)

Sd/-

Sd/-

(Joy Alfonso)

(Ajit Velip)

Witnesses

1. Sd/- (Suraj Naik)

2. Sd/- (Melroy Moura)

Dated : 21.02.2017

Panaji- Goa

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 972.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सेसा गोवा लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ संख्या 25/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-29012/26/2009-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 11th April, 2017

**S.O. 972.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2010) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Sesa Goa Ltd. and their workman, which was received by the Central Government on 03.04.2017.

[No. L-29012/26/2009-IR (M)]

RAJESH KUMAR, Under Secy.

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT : M.V. DESHPANDE, Presiding Officer****REFERENCE NO. CGIT-2/25 of 2010**

**EMPLOYERS IN RELATION TO THE MANAGEMENT OF  
SESA GOA LIMITED**

The Managing Director  
M/s. Sesa Goa Ltd.

Sesa Ghor, Patto Plaza  
Patto, Panaji  
Goa 403 001.

## AND

### THEIR WORKMEN

The General Secretary  
United Mine Workers Union  
G-5, Machado Apartment  
Tisk Ponda,  
Goa.

### APPEARANCES:

FOR THE EMPLOYER : Mr. G.K. Sardesai, Advocate.

FOR THE UNION : Mr. P. Gaonkar, Representative.

Mumbai, dated the 22<sup>nd</sup> February, 2017

### AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-29012/26/2009-IR (M), dated 18.03.2010 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

*“Whether the action of the management of M/s. Sesa Goa Ltd., Codli Mine, Goa in discharging Shri Tarun Raya Varak Multi Skilled Workman w.e.f. 5/7/2009 is legal and justified? What relief the workman is entitled for ?”*

2. After receipt of the reference, both parties were served with notice of the Reference. The second party union appeared through its legal representative and filed Statement of Claim at Ex-3. First party Management resisted the statement of claim of second party by filing their written statement at Ex-8. Issues were framed by my Ld. Predecessors at Ex-9. Both parties led their evidence and matter was fixed for filing Written Arguments.

3. Meanwhile today, i.e. on 22.02.2017 both parties filed joint purshis at Ex-50 stating that they have arrived at amicable settlement and prayed to dispose of the reference in view of the settlement filed at Ex-49. Orders were passed on Ex-49 & Ex-50. Accordingly, the reference is disposed of as settled. Hence the order:

### ORDER

In view of the settlement Ex-49, Reference stands dismissed.

Date: 22.02.2017

M.V. DESHPANDE, Presiding Officer

### Ex-49

#### MEMORANDUM OF SETTLEMENT UNDER SECTION 2 (P) OF THE INDUSTRIAL DISPUTES ACT, 1947 BETWEEN THE MANAGEMENT OF M/S. SESA GOA LIMITED AND THEIR WORKMAN SHRI TARUN VARAK

#### NAMES OF THE PARTIES TO THE SETTLEMENT

##### REPRESENTING MANAGEMENT

M/s. Sesa Goa Ltd.

##### WORKMAN

Shri Tarun Varak

#### SHORT RECITAL OF THE CASE

The management having regards to the Medical Report dated 27.05.09 as per the Rule 29 M (1) of the Mines Rules, 1955 and Clause 29 of the Standing Orders, declared Mr. Tarun Varak unfit for employment in mines and therefore his services as Multiskilled Workman was terminated as from 4.7.2009.

Mr. Tarun Varak raised an Industrial Dispute and the said dispute was referred to the Central Government Industrial Tribunal for adjudication. The said matter was registered as Ref.CGIT-2/25 of 2010.

During the pendency of the proceedings before the Tribunal, Mr. Tarun Varak approached the management and requested for a settlement.

After prolonged and protracted discussion, the parties finally arrived at a settlement. The terms of which are as under:

#### TERMS OF SETTLEMENT

1. The Management agrees to pay Mr. Tarun Varak a sum of Rs.4,50,000 (Four Lakhs fifty thousand) only in full and final settlement of all his claims.
2. Accordingly the workman Mr. Tarun Varak agrees to accept the payment and not to pursue any dispute raised individually or through any union before any Tribunal, Court, Authority or Forum and agrees that in the event of such dispute being raised that the same shall be treated as withdrawn/ settled.
3. The parties further agrees that in view of the above terms the Ref.No.CGIT-2/25 of 2010 stands withdrawn and treat the same as settled.

#### SIGNATORIES TO THE SETTLEMENT

Representative Employer

For Concerned workman

Sd/-

Sd/-

(S. Venkataraman)

(Tarun Varak)

Sd/-

(Joy Alfonso)

#### Witnesses

1. Sd/- (Suraj Naik)
2. Sd/- (Melroy Moura)

Dated : 21.02.2017

Panaji- Goa

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 973.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सेसा गोवा लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ संख्या 5/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-29011/31/2008-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 11th April, 2017

**S.O. 973.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2009) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Sesa Goa Ltd. and their workman, which was received by the Central Government on 03.04.2017.

[No. L-29011/31/2008-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

**PRESENT :** M.V. DESHPANDE, Presiding Officer

#### REFERENCE NO. CGIT-2/5 of 2009

EMPLOYERS IN RELATION TO THE MANAGEMENT OF  
SESA GOA LIMITED

The Managing Director  
M/s. Sesa Goa Ltd.  
Sesa Ghor, Patto Plaza  
Patto, Panaji  
Goa-403 001.

**AND****THEIR WORKMEN**

The General Secretary  
United Mine Workers Union  
G-5, Machado Apartment  
Tisk Ponda,  
Goa.

**APPEARANCES:**

FOR THE EMPLOYER : Mr. G.K. Sardesai, Advocate.  
FOR THE UNION : Mr. P. Gaonkar, Representative.

Mumbai, dated the 22<sup>nd</sup> February, 2017

**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No.L-29011/31/2008-IR (M), dated 03.02.2009 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

*“Whether the action of the management of M/s. Sesa Goa Ltd., in refusing employment to Shri Parcy Gustinho Gomes w.e.f. 1/7/2008 is legal and justified? What relief the workman is entitled for ?”*

2. After receipt of the reference, both parties were served with notice of the Reference. The second party union appeared through its legal representative and filed Statement of Claim at Ex-6. First party Management resisted the statement of claim of second party by filing their written statement at Ex-10. Issues were framed by my Ld. Predecessors at Ex-12. Both parties led their evidence and matter was fixed for filing Written Arguments.
3. Meanwhile today, i.e. on 22.02.2017 both parties filed joint purshis at Ex-50 stating that they have arrived at amicable settlement and prayed to dispose of the reference in view of the settlement filed at Ex-49. Orders were passed on Ex-49 & Ex-50. Accordingly, the reference is disposed of as settled. Hence the order:

**ORDER**

In view of the settlement Ex-49, Reference stands dismissed.

Date: 22.02.2017

M.V. DESHPANDE, Presiding Officer

**Ex-49**

**MEMORANDUM OF SETTLEMENT UNDER SECTION 2 (P) OF THE INDUSTRIAL DISPUTES ACT, 1947**  
**BETWEEN THE MANAGEMENT OF M/S. SESA GOA LIMITED AND THEIR WORKMAN**  
**SHRI PARCY GUSTINHO GOMES**

**NAMES OF THE PARTIES TO THE SETTLEMENT****REPRESENING MANAGEMENT**

M/s. Sesa Goa Ltd.

**WORKMAN**

Shri Parcy Gustinho Gomes

**SHORT RECITAL OF THE CASE**

The contract of employment of Mr. Parcy Gomes was a fixed term employment and has ended on its expiry.

The workman Mr. Parcy Gustinho Gomes thereafter raised an Industrial Dispute and the said dispute was referred to the Central Government Industrial Tribunal for adjudication. The said matter was registered as Ref.CGIT-2/5 of 2009.

During the pendency of the proceedings before the Tribunal, Mr. Parcy Gustinho Gomes approached the management and requested for a settlement.

After prolonged and protracted discussion, the parties finally arrived at a settlement. The terms of which are as under:

#### TERMS OF SETTLEMENT

1. The Management agrees to pay Mr. Parcy Gustinho Gomes a sum of Rs.50,000 (Fifty thousand only) in full and final settlement of all his claims.
2. Accordingly the workman Mr. Parcy Gustinho Gomes agrees to accept the payment and not to pursue any dispute raised individually or through any union before any Tribunal, Court, Authority or Forum and agrees that in the event of such dispute being raised that the same shall be treated as withdrawn/ settled.
3. The parties further agrees that in view of the above terms the Ref.No.CGIT-2/5 of 2009 stands withdrawn and treat the same as settled.

#### SIGNATORIES TO THE SETTLEMENT

Representative Employer

Sd/-

(S. Venkataraman)

Sd/-

(Joy Alfonso )

For Concerned workman

Sd/-

(General Secretary)

United Mine Workers Union

#### Witnesses

1. Sd/- (Suraj Naik)

2. Sd/- (Melroy Moura)

Dated : 21.02.2017

Panaji- Goa

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 974.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सेसा गोवा लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ संख्या 35/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-29011/24/2010-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 11th April, 2017

**S.O. 974.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2011) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Sesa Goa Ltd. and their workman, which was received by the Central Government on 03.04.2017.

[No. L-29011/24/2010-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

**PRESENT :** M.V. DESHPANDE, Presiding Officer

#### REFERENCE NO. CGIT-2/35 of 2011

EMPLOYERS IN RELATION TO THE MANAGEMENT OF  
SESA GOA LIMITED

The Managing Director  
M/s. Sesa Goa Ltd.  
Sesa Ghor, Patto Plaza  
Patto, Panaji  
Goa-403 001.

**AND****THEIR WORKMEN**

The General Secretary  
United Mine Workers Union  
G-5, Machado Apartment  
Tisk Ponda,  
Goa.

**APPEARANCES:**

FOR THE EMPLOYER : Mr. G.K. Sardesai, Advocate.  
FOR THE UNION : Mr. P. Gaonkar, Representative.

Mumbai, dated the 22<sup>nd</sup> February, 2017

**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No.L-29011/24/2010-IR (M), dated 16.06.2011 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

*“Whether the action of the management of M/s. Sesa Goa Ltd., Codli Mine, Goa in discharging Shri Ahmed Agha, Sr. Oilman w.e.f. 2/2/2010 is legal and justified? What relief the workman is entitled for ?”*

2. After receipt of the reference, both parties were served with notice of the Reference. The second party union appeared through its legal representative and filed Statement of Claim at Ex-3. First party Management resisted the statement of claim of second party by filing their written statement at Ex-9. Issues were framed by my Ld. Predecessors at Ex-10. Both parties led their evidence and matter was fixed for filing Written Arguments.
3. Meanwhile today, i.e. on 22.02.2017 both parties filed joint purshis at Ex-39 stating that they have arrived at amicable settlement and prayed to dispose of the reference in view of the settlement filed at Ex-38. Orders were passed on Ex-38 & Ex-39. Accordingly, the reference is disposed of as settled. Hence the order:

**ORDER**

In view of the settlement Ex-38, Reference stands dismissed.

Date: 22.02.2017

M.V. DESHPANDE, Presiding Officer

**Ex-38**

**MEMORANDUM OF SETTLEMENT UNDER SECTION 2 (P) OF THE INDUSTRIAL DISPUTES ACT, 1947**  
**BETWEEN THE MANAGEMENT OF M/S. SESA GOA LIMITED AND THEIR WORKMAN**  
**SHRI AHMED AGHA**

**NAMES OF THE PARTIES TO THE SETTLEMENT****REPRESENING MANAGEMENT**

M/s. Sesa Goa Ltd.

**WORKMAN**

Shri Ahmed Agha

**SHORT RECITAL OF THE CASE**

Mr. Ahmed Agha was terminated vide letter of termination dated 01.02.2010. As an industrial dispute was pending before the Central Industrial Tribunal, an Application for approval of termination was moved before the Tribunal and the same was registered as Approval Application No.CGIT-2.01/2010.

The Workman Mr. Ahmed Agha thereafter raised an Industrial Dispute and the said dispute was referred to the Central Government Industrial Tribunal for adjudication. The said matter was registered as Ref.CGIT-2.35 of 2011.

During the pendency of the proceedings before the Tribunal, Mr. Ahmed Agha approached the management and requested for a settlement.

After prolonged and protracted discussion, the parties finally arrived at a settlement. The terms of which are as under:

#### TERMS OF SETTLEMENT

1. The Management agrees to pay Mr. Ahmed Agha a sum of Rs.9,00,000 (Nine Lakhs only) in full and final settlement of all his claims.
2. Accordingly the workman Mr. Ahmed Agha agrees to accept the payment and not to pursue any dispute raised individually or through any union before any Tribunal, Court, Authority or Forum and agrees that in the event of such dispute being raised that the same shall be treated as withdrawn/ settled.
3. The parties further agrees that in view of the above terms the Ref.No.CGIT-2/35 of 2011 as well as the application for approval registered as No.CGIT-2/01/2010 stands settled/withdrawn.

#### SIGNATORIES TO THE SETTLEMENT

Representative Employer

For Concerned workman

Sd/-

Sd/-

(S. Venkataraman)

(Ahmed Agha)

Sd/-

(Joy Alfonso)

#### Witnesses

1. Sd/- (Suraj Naik)
2. Sd/- (Melroy Moura)

Dated : 21.02.2017

Panaji- Goa

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 975.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सेसा गोवा लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ संख्या 42/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-29011/33/2008-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 11th April, 2017

**S.O. 975.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2009) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Sesa Goa Ltd. and their workman, which was received by the Central Government on 03.04.2017.

[No. L-29011/33/2008-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

**PRESENT :** M.V. DESHPANDE, Presiding Officer

**REFERENCE NO. CGIT-2/42 of 2009**

EMPLOYERS IN RELATION TO THE MANAGEMENT OF  
SESA GOA LIMITED



The Managing Director  
M/s. Sesa Goa Ltd.  
Sesa Ghor, Patto Plaza  
Patto, Panaji  
Goa 403 001.

**AND**

**THEIR WORKMEN**

The General Secretary  
United Mine Workers Union  
G-5, Machado Apartment  
Tisk Ponda,  
Goa.

**APPEARANCES:**

FOR THE EMPLOYER : Mr. G.K. Sardesai, Advocate.

FOR THE UNION : Mr. P. Gaonkar, Representative.

Mumbai, dated the 22<sup>nd</sup> February, 2017

**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No.L-29011/33/2008-IR (M), dated 29.04.2009 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

*“Whether the action of the management of M/s. Sesa Goa Ltd., in refusing employment to Shri Giri T. Naik and Shri Umesh Naik, Heavy A. Drvier w.e.f. 1/8/2008 is legal and justified? What relief the workmen are entitled for ?”*

2. After receipt of the reference, both parties were served with notice of the Reference. The second party union appeared through its legal representative and filed Statement of Claim at Ex-6 First party Management resisted the statement of claim of second party by filing their written statement at Ex-10. Issues were framed by my Ld. Predecessors at Ex-12. Both parties led their evidence and matter was fixed for filing Written Arguments.

3. Meanwhile today, i.e. on 22.02.2017 both parties filed joint purshis at Ex-55 stating that they have arrived at amicable settlement and prayed to dispose of the reference in view of the settlement filed at Ex-54. Orders were passed on Ex-54 & Ex-55. Accordingly, the reference is disposed of as settled. Hence the order:

**ORDER**

In view of the settlement Ex-54, Reference stands dismissed.

Date: 22.02.2017

M.V. DESHPANDE, Presiding Officer

**Ex-54**

**MEMORANDUM OF SETTLEMENT UNDER SECTION 2 (P) OF THE INDUSTRIAL DISPUTES ACT, 1947**  
**BETWEEN THE MANAGEMENT OF M/S. SESA GOA LIMITED AND THEIR WORKMAN**  
**SHRI GIRI TULSHIDAS NAIK AND SHRI UMESH B. NAIK**

**NAMES OF THE PARTIES TO THE SETTLEMENT**

**REPRESENING MANAGEMENT**

M/s. Sesa Goa Ltd.

**WORKMAN**

Shri Giri Tulshidas Naik

Shri Umesh B. Naik

**SHORT RECITAL OF THE CASE**

The Contract of employment of Mr. Giri Tulshidas Naik and Mr. Umesh B. Naik was a fixed term employment and has ended on its expiry.

The workman Shri Giri Tulshidas Naik and Shri Umesh B. Naik thereafter raised an Industrial Dispute and the said dispute was referred to the Central Government Industrial Tribunal for adjudication. The said matter was registered as Ref.CGIT-2/42 of 2009.

During the pendency of the proceedings before the Tribunal, Shri Giri Tulshidas Naik and Shri Umesh B. Naik approached the management and requested for a settlement.

After prolonged and protracted discussion, the parties finally arrived at a settlement. The terms of which are as under:

#### TERMS OF SETTLEMENT

1. The Management agrees to pay Mr. Giri Tulshidas Naik a sum of Rs.1,25,000 (One Lakh twenty five thousand only) and Rs.50,000/- (Rupees fifty thousand only) to Mr. Umesh B. Naik in full and final settlement of all their claims.
2. Accordingly the workman Shri Giri Tulshidas Naik and Shri Umesh B. Naik agrees to accept the payment and not to pursue any dispute raised individually or through any union before any Tribunal, Court, Authority or Forum and agrees that in the event of such dispute being raised that the same shall be treated as withdrawn/ settled.
3. The parties further agrees that in view of the above terms the Ref,No.CGIT-2/42 of 2009 stands withdrawn and treat the same as settled.

#### SIGNATORIES TO THE SETTLEMENT

Representative Employer

Concerned workman

Sd/-

Sd/-

(S. Venkataraman)

(Giri Naik)

Sd/-

Sd/-

(Joy Alfonso)

(Umesh Naik)

#### Witnesses

1. Sd/- (Suraj Naik)

2. Sd/- (Melroy Moura)

Dated : 21.02.2017

Panaji- Goa

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 976.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स गुजरात मिनरल डेवलपमेंट कार्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद क पंचाट (संदर्भ संख्या 25/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-29012/6/2010-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 11th April, 2017

**S.O. 976.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2011) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Gujarat Mineral Development Corporation Ltd. and their workman, which was received by the Central Government on 03.04.2017.

[No. L-29012/6/2010-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 16<sup>th</sup> March, 2017

**Reference: (CGITA) No. 25/2011**

1. The Managing Director,  
Gujarat Mineral Development Corporation Ltd.,  
Khanji Bhavan, University Ground,  
132 Ft Ring Road, Ahmedabad – 380052
2. The General Manager,  
Gujarat Mineral Development Corporation Ltd.,  
At & Post Rajpardi, Jhagadia,  
Bharuch (Gujarat)

...First Party

V/s

The General Secretary,  
Rashtriya Mazdoor Union,  
Aram Building, Poolbari Naka, Salatwada,  
Vadodara (Gujarat) – 390001

...Second Party

For the First Party : None

For the Second Party : None

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-29012/6/2010-IR(M) dated 15.04.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the demand of the Rashtriya Mazdoor Union to give promotion to the 22 workmen from the date of their completion of 08/18/27 years of service is legal, proper and just? If so, to what relief the workmen concerned are entitled?”

1. The reference dates back to 15.04.2011. The second party submitted the statement of claim Ex. 5 on 02.02.2012 through his representative Shralaben Kurup for Rashtriya Mazdoor Union. Since then both the parties are absent despite knowledge and service on both the parties. Therefore, it appears that the second party workman is not willing to prosecute the reference.
2. Therefore, the reference is disposed of with the observation as under: “the demand of the Rashtriya Mazdoor Union to give promotion to the 22 workmen from the date of their completion of 08/18/27 years of service is illegal, improper and unjust.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 977.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 323/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-30012/26/2000-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 11th April, 2017

**S.O. 977.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 323/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and other and their workman, which was received by the Central Government on 03.04.2017.

[No. L-30012/26/2000-IR (M)]

RAJESH KUMAR, Under Secy.

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 16<sup>th</sup> March, 2017

**Reference: (CGITA) No. 323/2004**

1. The Group General Manager,  
ONGC Ltd., Avani Bhavan, 5<sup>th</sup> Floor, Chandekheda,  
Ahmedabad (Gujarat)
2. M/s Industrial Security Services,  
Parichay Shopping Centre, Near 'D' Cabin,  
IOC Road, Post New Railway Colony,  
Ahmedabad (Gujarat) – 380001

...First Party

**V/s**

The General Secretary,  
Gujarat Petroleum Employees Union,  
434/36, Gandhivas Naka, Gujarat Stadium Road,  
Sabarmati,  
Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri K.V. Gadhia

For the Second Party : Kum. Santoshben

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/26/2000-IR(M) dated 11.08.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the demand of Gujarat Petroleum Employees Union, Ahmedabad to declare that the arrangement through which Shri Mahendrabhai Dolabhai Patel employed as helper in ONGC Ahmedabad project is sham and bogus and the concerned workman who has been terminated from service w.e.f. 01.04.1999 is entitled for reinstatement and absorption is legal and justified? If yes than to what relief the concerned workman is entitled to and from which date?”

1. The reference dates back to 11.08.2000. In response to the notice, both the parties submitted their statement of claim and written statement Ex. 4 and Ex. 5 respectively. The second party workman was also examined but he did not come back for cross-examination. The reference is very old one pending since year 2000. The first party advocate appears on each and every date but the second party workman has not been appearing for cross-examination since his examination on 29.03.2006. However his advocate Kum. Santoshben on behalf of the general secretary, Gujarat Petroleum Employees Union has stated that his client/the workman has not been contacting him since last 9 years, therefore, she wanted to withdraw the case.
2. Therefore, the reference is disposed of as withdrawn.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 978.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 733/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-30011/66/2001-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 11th April, 2017

**S.O. 978.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 733/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and other and their workman, which was received by the Central Government on 03.04.2017.

[No. L-30011/66/2001-IR (M)]

RAJESH KUMAR, Under Secy.

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

##### Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 20<sup>th</sup> March, 2017

##### Reference: (CGITA) No. 733/2004

1. The Group General Manager (Projects),  
ONGC Ltd., Ankleshwar Project,  
Ankleshwar (Gujarat) – 393010
2. M/s Industrial Security Services,  
Room No. 2, Niharika Apartment, Navi Nagri Road,  
Nr. ONGC Office, District Bharuch,  
Ankleshwar (Gujarat) – 393010

...First Party

##### V/s

The General Secretary,  
ONG Mazdoor SanghC/oBhartiya Mazdoor Sangh,  
Nr. Asian Paint Chokdi,  
GIDC, Ankleshwar (Gujarat)

...Second Party

For the First Party : C.S. Naidu Associates

For the Second Party : A.N. Patel

### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/66/2001-IR(M) dated 04.07.2001 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

### SCHEDULE

“Whether the demand of the union to absorb/regularize the services of Shri Chandel Jairamsinh Parthamsinh and 4 others as permanent and direct employees of ONGC Ltd., Ankleshwar from the date of their entry in the service as contractual workman and all other benefits as enjoyed as the regular employees of ONGC Ltd. is legal, proper and justified? If so, to what relief the concerned workmen are entitled to and from which date and what other directions are necessary in the matter?”

1. The reference dates back to 04.07.2001. The second party submitted the statement of claim Ex. 8 on 15.02.2002 and the first party submitted the written statement Ex. 14 on 03.05.2002. It is noteworthy that two of the workmen namely Vasava Paulbhai Jhonbhai and Chauhan Dinesh Mangaldas withdrew from the reference vide order Ex. 15

dated 04.11.2015. Since then rest of 3 workmen refrained to lead evidence after giving number of dates despite seeking adjournment on 03.02.2016. Therefore, it appears that the second party is not willing to prosecute the reference.

2. Thus, in the absence of the evidence of the second party, the reference is disposed of with the observation as under: “the demand of the union to absorb/regularize the services of Shri Chandel Jairamsinh Parthamsinh and 4 others as permanent and direct employees of ONGC Ltd., Ankleshwar from the date of their entry in the service as contractual workman and all other benefits as enjoyed as the regular employees of ONGC Ltd. is illegal, improper and unjustified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 979.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारत पेट्रोलियम कार्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1121/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-30012/19/1999-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 11th April, 2017

**S.O. 979.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1121/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Bharat Petroleum Corporation Ltd. and their workman, which was received by the Central Government on 03.04.2017.

[No. L-30012/19/1999-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

##### Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 20<sup>th</sup> March, 2017

##### Reference: (CGITA) No. 1121/2004

The Senior Installation Manager,  
Bharat Petroleum Corporation Ltd.,  
Kandla Installation, Kharirohar, P.B. No. 33,  
Gandhidham (Gujarat) – 360001

...First Party

##### V/s

The Secretary,  
Petroleum Employees Union,  
Plot No. 280, Sector – 7,  
Gandhidham (Gujarat) – 370201

...Second Party

For the First Party : Shri P.I. Shah

For the Second Party : Shri N.H. Rathod

#### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/19/1999-IR(M) dated 05.08.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the action of Bharat Petroleum Corporation Ltd., Kandla Installation, Kandla (Kutch) in imposing the penalty of stoppage of two increments in the grade on Shri C.A. Parmar, General Workman is just, valid and legal? If not, to what relief the workman is entitled and what directions are necessary in the matter?”

1. The reference dates back to 05.08.1999. The second party submitted the statement of claim Ex. 4 on 24.04.2006 and the first party submitted the written statement Ex. 10 on 31.07.2009. Since then the second party has been absent and has also not been leading evidence, therefore, on 14.02.2011, a notice Ex. 11 was issued to the parties to appear on 24.03.2011 but none appeared to lead evidence. Therefore, it appears that the second party is not willing to prosecute the reference.

2. Thus, in the absence of the evidence of the second party, the reference is disposed of with the observation as under: “the action of Bharat Petroleum Corporation Ltd., Kandla Installation, Kandla (Kutch) in imposing the penalty of stoppage of two increments in the grade on Shri C.A. Parmar, General Workman is just, valid and legal.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 980.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मेडिकल एण्ड हेल्थ सर्विस, आईआईएससीओ के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 15/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-29012/19/2012-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 11th April, 2017

**S.O. 980.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2012) of the Central Government Industrial Tribunal/Labour Court, Asansol now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Medical and Health Service, IISCO and their workman, which was received by the Central Government on 03.04.2017.

[No. L-29012/19/2012-IR (M)]

RAJESH KUMAR, Under Secy.

**ANNEXURE****BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL**

**PRESENT :** Sri Pramod Kumar Mishra, Presiding Officer

**REFERENCE NO. 15 OF 2012**

**PARTIES :**

The Director of Medical & Health Services, IISCO (Now SAIL-ISP)

V/s

Sri Tarit Kumar Chakraborty

**REPRESENTATIVES :**

For the management : Sri Nirmalendu Ganguly, Learned Advocate

For the union (Workman) : Sri P. K. Das, Learned Advocate

INDUSTRY: STEEL

STATE : WEST BENGAL

Dated : 06.03.2017

### AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **NO. L-29012/192012–IR(M)** dated 18.04.2012 has been pleased to refer the following dispute for adjudication by this Tribunal.

### SCHEDULE

“Whether the action of the Director of Medical Health and Service, I.I.S.C.O. (Now S.A.I.L.-I.S.P.), Burnpur in dismissing the services of Sri Tarit Kumar Chakraborty, Head Pharmacist vide his order No. CPD/1503 dated 04/07.04.1998 is legal and justified? What relief the workmen are entitled to and from which date? ”

**1.** Having received the Order **NO. L-29012/192012–IR(M)** dated 18.04.2012 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. **15 of 2012** was registered on 03.05.2012. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

**2.** The workman Sri Tarit Kumar Chakraborty has alleged in his written statement that he was appointed as Pharmacist ‘C’ in Indian Iron and Steel Company Limited (I.I.S.C.O.) Hospital a subsidiary of Steel Authority of India Limited (S.A.I.L.) at Burnpur. During service period he got his due promotions. He was promoted to the post of Head Pharmacist in the year 1990. He has functioning as Head Pharmacist in Chooto Dighari Health Centre. It was the duty of Head Pharmacist to bring the medicine from the main store of Hospital by submitting indent. As per Indian Iron and Steel Company Limited rules the indent of medicine had to be submitted from counter pharmacist. Head Pharmacist accepted the said indent and placed before Director of Medical Health and Service (D.M.H.S.) and Store In-charge accepted the same indent. As per rule there was no scope to submit any indent by the Head Pharmacist to the store. The above indent was duly signed by 5 (Five) persons, i.e. signature of Indentors, signature of Word I/C, signature of D.M.H.S., signature of Recipient and signature of Additional Medical Superintendent (Stores). So, entire process of bringing medicine from store is a chain work. The Head Pharmacist has no rights to bring medicine without receiving any requisite from Counter Pharmacist and without processing through the above signatures. All of sudden workman received a Memo form Office of Assistant Director (Medical Administration) on 19.07.1996 vide Memo No. M/145/3060/96 to appear before Executive Vigilance in the Vigilance Department on 30.07.1996 in connection with the Enquiry related to Chooto Dighari Dispensary. The workman appeared before the Enquiry Officer on 30.07.1996 and on 02.08.1996. Assistant Director (Medical Administration) Dr. J. K. Lahiri issued a Chargesheet vide Memo No. 9.1.97 wherein a serious allegation / charge was framed against the workman that he was responsible for irregularities in Ledger, Stock Register and Vouchers. As per report of the said Vigilance Officer the workman was held liable for gross irregularities and manipulation of false entries in the Stock Register. The workman was required to explain the said charges regarding misconduct of Clause No. 25 (III), (XIV), (XIX) and (XXIII) of the certified standing order of the company. The entire Charge sheets issued to the workman were not in proper form. It is mandatory that Chargesheet must be supported by statement of allegation of misconduct, containing relevant facts, documentary and otherwise and list of witness by whom the charges are to be substantiated. The Chargesheet is defective. The workman replied the Chargesheet, denying the allegation. The Indian Iron and Steel Company Limited (I.I.S.C.O.) authority decided to hold a domestic enquiry against the workman and consequently Mr. S. S. Mahalanabis was appointed as the Enquiry Officer. As per direction of the Enquiry Officer the workman appeared before the Enquiry Officer during enquiry proceeding. The Enquiry Officer did not serve copy of documents. The Enquiry Officer did not allow the opportunity of cross-examination from company’s witnesses and acted in arbitrary manner. The Enquiry Officer conducted the enquiry in violation of principles of natural justice. The opposite party issued a 2<sup>nd</sup> Show-Cause Notice upon ex-parte Enquiry Report submitted by the Enquiry Officer. The workman denied the allegation labelled against him. The workman received an Order of Dismissal from service on 07.04.1998 issued by Director of Medical and Health Service. And he was directed to handover the charges to senior Pharmacist. The Order of Dismissal is wrong, arbitrary and not at all maintainable under eye of law. The workman has prayed that order of dismissal is arbitrary and he should be allowed to join service with full back wages.

**3.** The management of Indian Iron and Steel Company Limited (I.I.S.C.O.) a subsidiary of Steel Authority of India Limited (S.A.I.L.), Burnpur, has filed written statement. The management has stated that reference is barred by Administrative Tribunal Act, 1985. The management has also stated that the reference is barred by limitation. The workman Sri Tarit Kumar Chakraborty while serving as Senior Pharmacist in hospital of the company in Chhotodighari committed some irregularities which have been detected. Consequently he had been chargesheeted vide Charge Memo dated 10.01.1997 as per Clause 25 (iii), (xiv), (xix) and (xxiii) which are as follows:- *(iii) Theft, fraud or dishonesty in connection with company’s business or property, (xiv) Sabotage or Willful damage to or causing loss of company’s*



*goods and property, (xix) Contravention of standing orders or Rules or Regulations hereunder, (xxiii) Willful falsification, defacement or destruction of personal records or records of the company.*

The workman Sri Tarit Kumar Chakraborty replied to the Charge Memo but it was found to be unsatisfactory. Sri S. S. Mahanayak, the then personnel manager of the company has been appointed as the Enquiry Officer to conduct the enquiry against the workman. The Enquiry Officer Sri S. S. Mahanayak conducted the enquiry day to day. The concerned workman participated in the enquiry proceeding. He had been given full opportunity in his effective participation in the enquiry proceeding in compliance with doctrine of natural justice. The concerned workman Sri Tarit Kumar Chakraborty participated in the enquiry proceeding. He cross-examined the witnesses and defended himself to the best of his ability. The Enquiry Officer held the workman guilty of the charges labelled against him. After receipt of the finding of the Enquiry Officer the employer issued 2<sup>nd</sup> Show-Cause Notice to the concerned workman. After considering the reply submitted by the concerned workman to the 2<sup>nd</sup> Show-Cause Notice and by considering all relevant facts the employers had been compelled to impose punishment of dismissal of concerned workman considering the gravity of offence committed by Sri Tarit Kumar Chakraborty. The management has prayed that tribunal may kindly pass No Dispute Award.

**4. Workman has filed following documentary evidences :-**

(i) Photocopy of the Order of the High Court at Kolkata, W.P. No.-12947(w) of 1998 passed by Hon'ble Judge Sri Altamas Kabir, (ii) Photocopy of the 2<sup>nd</sup> Order of High Court, Kolkata W.O. No. – 2087/2005 passed by Hon'ble Judge Sri S. K. Mukherjee, (iii) Photocopy of the previous Order No. L22015/1/2000/IR(CM-II) dated 20/21.09.2000 of Sri N. P. Kesavan, Desk Officer dated 20/21.09.2000, Govt. of India, Ministry of Labour, New Delhi, (iv) Photocopy of the Order No. L29012/19/2012-IR(M) dated 18.04.2012 of Sri John Topno, Under Secretary, Govt. of India, Ministry of Labour, New Delhi, (v) Photocopy of the Order Sheet of Ref. No. 97/2000 of CGIT -cum- Labour Court, Asansol, (vi) Photocopy of the Order Passed by the Presiding Order of CGIT -cum- Labour Court, Asansol dated 15.03.2010, (vii) Photocopy of the Application dated 07.06.2010 to the Dy. Labour Commissioner, Govt. of W.B., Burnpur Road, Asansol, (viii) Photocopy of the Order of Sri M. L. Verma, Regional Labour Commissioner (Central), Asansol No. A1/95/1/85 Pt-III, dated 08/11.11.2010, (ix) Photocopy of the Gazette of India, (x) Photocopy of the Application to the Regional Labour Commissioner (Central), Asansol, (xi) Photocopy of the Application to the Regional Labour Commissioner (Central), Asansol which was sent to the IISCO.

The workman Sri Tarit Kumar Chakraborty has filed affidavit in his oral evidence and he has been cross-examined by the learned advocate of the management.

The management has filed original record of complete Enquiry Proceeding connected with all documents therein.

The management filed affidavit of Sri Sudhanshu Sekhar Mahanayak, the then Enquiry Officer as MW1 in evidence on preliminary point. MW1 has been cross-examined by the learned advocate of the workman.

**5.** I have heard the arguments Sri P. K. Das, learned advocate appearing on behalf of the workman Sri Tarit Kumar Chakraborty and Sri Nirmalendu Ganguly the learned advocate appearing on behalf of the I.I.S.C.O. a subsidiary of S.A.I.L., Burnpur.

**6.** Sri Nirmalendu Ganguly the learned advocate appearing on behalf of the I.I.S.C.O. a subsidiary of S.A.I.L. has argued that Sri Tarit Kumar Chakraborty committed serious misconduct by selling the medicine of the company to the outside market. The guilt of the workman has been proved in the domestic enquiry and the punishment of dismissal is justified. Sri Nirmalendu Ganguly has also filed written argument. On the other hand Sri P. K. Das, learned advocate appearing on behalf of the workman has argued that management has not examined any independent witness.

**7.** It is admitted fact that Sri Tarit Kumar Chakraborty was Head Pharmacist in Indian Iron and Steel Company Limited (I.I.S.C.O.) Hospital a subsidiary of Steel Authority of India Limited (S.A.I.L.) at Burnpur. On allegation of misappropriation he was dismissed from service after domestic enquiry. The concerned workman Sri Tarit Kumar Chakraborty has challenged the departmental enquiry on ground of non-compliance of natural justice, which has been denied by the management of Indian Iron and Steel Company Limited (I.I.S.C.O.) a subsidiary of Steel Authority of India Limited (S.A.I.L.), Burnpur. The management has stated that the reference is barred by limitation because of delay in espousing the dispute in Para-2 of his written statement. None of the party to this reference has argued on this point. So far as law of limitation is concerned the Hon'ble Apex court in **Ajaib Singh v/s The Sirhind Co-operative Marketing cum-Processing Services Society Limited and Another, 1999 (82) FLR 137** has held that :-

*"It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay"*

In view of the law propounded by the Hon'ble Apex Court the reference is not barred by limitation.

8. The management of Indian Iron and Steel Company Limited (I.I.S.C.O.) a subsidiary of Steel Authority of India Limited (S.A.I.L.), Burnpur has stated in Para-4 that the reference is barred under Administrative Tribunal Act, 1985. None of the parties to the reference had argued on this point. Therefore this question is decided in negative.

9. The question arises for consideration, whether the enquiry against delinquent workman namely Sri Tarit Kumar Chakraborty was held in compliance of principles of natural justice? Whether the delinquent workman was afforded opportunity to defend himself effectively? Second question arises for consideration that the Order of Dismissal is harsh and disproportionate?

10. I have carefully perused the entire enquiry proceeding filed by the management of Indian Iron and Steel Company Limited (I.I.S.C.O.) a subsidiary of Steel Authority of India Limited (S.A.I.L.), Burnpur. The workman had been given copy of Chargesheet. He was afforded 7 (Seven) days time to reply to the Chargesheet issued to him. The statement of management witness was recoded in his presence and the delinquent workman was afforded opportunity of cross-examination from witnesses of the management. The delinquent workman Sri Tarit Kumar Chakraborty cross-examined the management witness. After examination and cross-examination of management witness the concerned workman Sri Tarit Kumar Chakraborty was afforded opportunity to lead defence evidence. After submission of Enquiry Report the competent authority before passing order of punishment issued 2<sup>nd</sup> Show-Cause Notice, and after receiving the reply of the concerned workman the competent authority passed the Dismissal Order dated 04/07.04.1998. From perusal of entire enquiry proceeding it does not appear to be any violation of principles of natural justice in conducting the departmental enquiry against concerned workman Sri Tarit Kumar Chakraborty.

11. Since the workman has challenged the bona fides of departmental enquiry and has stated in his written statement that enquiry was conducted in violation of principles of natural justice. Therefore the tribunal passed an order to lead evidence on preliminary point by management of Indian Iron and Steel Company Limited (I.I.S.C.O.) a subsidiary of Steel Authority of India Limited (S.A.I.L.), Burnpur. The management of Indian Iron and Steel Company Limited (I.I.S.C.O.) a subsidiary of Steel Authority of India Limited (S.A.I.L.), Burnpur examined Sri Sudhanshu Sekhar Mahanayak, the then Enquiry Officer as MW1. He proved the Enquiry Report. The workman cross-examined the MW1 but evidence of MW1 is un-shattered. After hearing the learned counsel of both the parties to the reference on preliminary point regarding fairness of enquiry the Tribunal passed the Order dated 10.9.15 that domestic enquiry does not appear to be suffered from non-compliance of principles of natural justice or domestic enquiry is vitiated.

12. So far as punishment is concerned, the loss of confidence in the integrity of an employee is substantial question which requires consideration. Hospitals are sensitive institution and are engaged in saving human life and the success of such institution is much upon the confidence generated by the staff working their. The success of the institution depends not only on the attitude of the employer but equally in the manner in which the employees perform their duty. The punishment can not be said to be harsh.

13. In view of above discussion the action of Director of Medical Health and Service, I.I.S.C.O. (Now S.A.I.L.-I.S.P.), Burnpur in dismissing the services of Sri Tarit Kumar Chakraborty, Head Pharmacist vide his order No. CPD/1503 dated 04/07.04.1998 is legal and justified. The workman is not entitled to any relief.

### ORDER

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

का.आ. 981.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स उड़ीसा मिनरल्स डेवलपमेंट कं. लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 16/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-29012/44/2008-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 11th April, 2017

S.O. 981.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2009) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the

management of M/s. Orissa Minerals Development Co. Ltd. and their workman, which was received by the Central Government on 03.04.2017.

[No. L-29012/44/2008-IR (M)]

RAJESH KUMAR, Under Secy.

### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

##### Present:

Shri B.C. Rath,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

#### INDUSTRIAL DISPUTE CASE NO. 16/2009

Date of Passing Award – 13<sup>th</sup> February, 2017

##### Between:

The General Manager,  
Orissa Minerals Development Co. Ltd.,  
At./Po. Thakurani, Via. Barbil,  
Dist. Keonjhar – 758 035, Orissa

...1<sup>st</sup> Party-Management

##### (And)

Shri Manoranjan Patra, Qrs. No. G-18,  
OMDC Limited, Po. Thakurani,  
Via. Barbil, Keonjhar, Orissa

...2<sup>nd</sup> Party-Workman

##### Appearances:

Shri Samarendra Tripathy,  
Asst. Manager (Liaison)

...For the 1<sup>st</sup> Party-Management

Shri Satyananda Behera,  
Auth. Representative

...For the 2<sup>nd</sup> Party- Workman

### AWARD

The Government of India in the Ministry of Labour in exercising its powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the present dispute between the parties named above with the schedule:-

“whether the action of the management of Orissa Mineral Development Company Ltd. In not regularizing the services of Shri Manoranjan Patra is just & legal? What relief the workman is entitled to and from which date?”

for its adjudication vide their letter No. L-29012/44/2008-IR(M), dated 12.3.2009. It is pertinent to mention here that the reference seems to have been made pursuant to the direction of the Hon'ble High Court of Orissa, Cuttack in W.P.(C) No. 10198/2008

2. The case of the disputant workman Shri Manoranjan Patra as revealed from his statement of claim is that he was appointed temporarily by the Management of OMDC Limited as a Typist-cum-Office Assistant with effect from 10<sup>th</sup> July, 1992 and he was initially posted in Bhadrāsahi Mines at Roida. Then, his service was utilized for different purposes in between 1994 to 1998 and he was deputed to work in the mining fields at Roida, Belkundi and Thakurani Mines at Barbil as Mining Supervisor. Thereafter, he was posted again as a Typist in the office of Bhadrāsahi Mines, Roida. In 2001, he was again asked to work in Railway Sliding No. 2, Job Crusher Plant, Belkundi, Badbil. It is his claim that he had been working more than 240 days continuously in each calendar year till his salary was stopped with effect from June, 2010. In view of he rendering service continuously for a long period he made a representation for regularization of his service. But the Management paid no heed to his such prayer. It is also averred by him that he was extended E.P.F. facility by the Management and he was allotted with a quarters by the Management and he was issued with experience certificates from time to time. Services of daily wagers, who, joined subsequent to him, were regularized, whereas, he was not considered for such regularization despite he worked for the Management continuously for a pretty long period. Hence, he raised a dispute before the Asst. Labour Commissioner (Central) giving rise to the present reference as mentioned supra. During pendency of the reference the workman is alleged to have been retrenched from service without prior approval of this Tribunal and in violation of the provisions of Section 33(1) & (b) of the I.D. Act for which a Misc. Case bearing No. 26/2012 is under section 33(1) is pending for disposal.

3. In its written statement, the Management has taken a stand that, the workman was never given appointment as a Typist in the year 1992 as claimed by him. As per the records available with the Management he was given a contract job for a period of one year vide Management letter dated 31.8.1994 to do the work of preparing the renewal mining lease for a fixed remuneration of Rs. 1200/- per month. Thereafter, he worked as a contract labourer being deployed by the contractor M/s. Kabita Patra. During such employment his provident fund contribution was made and deposited by the said contractor. On cessation of contract between M/s. Kabita Patra and OMDC, the provident fund amount was settled and withdrawn by the disputant workman. Thereafter, he was employed in M/s. Orissa Iron Private Limited, Kolkatta. The Management has pleaded further that, being a Public Sector Undertaking under the administrative control of Ministry of Steel, Govt. of India, is required to abide by the rules and regulations meant for giving appointment in its establishment. As the disputant workman was given a job for a specific period, he ceases to be a workman of the Management on expiry of that job contract. As the service of the disputant workman completed by virtue of expiry of his term of appointment, he cannot be regularized in his service in the establishment of the Management.

4. On the aforesaid pleadings of the parties issues mentioned below have been settled for adjudication of the dispute.

### ISSUES

1. Whether the action of the management of Orissa Mineral Development Company Ltd., in not regularizing the services of Shri Manoranjan Patra is just and legal?
2. What relief the workman is entitled to and from which date?

5. Besides examining himself as a witness, the workman has filed documents like copy of his I-Card, copy of his E.P.F. slip, copy of experience certificate dated 21.2.1994 & 5.10.1996, copy of his employment card, copy of his attendance report for the month of Aug. & Sept., 1996, copy of the monthly report for the month of 11 & 12/2001, 4/2002, 12/2003, 5 & 6 of 2005, copy of educational stipend form, copy of application dated 14.4.2007 for regularization of service, copy of failure report of R.L.C.(C), Rourkela, copy of letter dated 16.7.2010 to Dy. General Manager (I/c.) OMDC Limited, Thakurani, copy of I-Card given by the Management of OMDC and copy of the I-Card issued by the Management to Shri J. Oram which are marked as Ext.- 1 to Ext.-11 in support of his claim. On the other hand Shri Birendra Kumar Mahanta, Deputy Manager (Personnel) has been examined on behalf of the Management and reliance has been placed on the documents like copy of letter dated 31.8.1994 issued by it, copy of letter dated 22.4.2014 issued by it, copy of the letter dated 23.4.2014 issued by Asst. P.F. Commissioner, SRO, Keonjhar in favour of the Management, copy of the letter dated 2.8.2007 issued by Orissa Iron Ore Private Limited and copy of the letter dated 20.9.2013 issued by the Management in favour of Chief Fire Officer, Cuttack marked as Ext.-A to Ext.-E to refute the claim.

### FINDINGS

#### ISSUE NO. 1 & 2

6. The workman has claimed in his oral evidence that he was given appointment by the Management as a Typist-cum-Office Assistant in July, 1992. But, no appointment letter or any document to suggest that he was ever offered employment of Typist-cum-Office Assistant in July, 1992 is filed to support such claim. As per the settled principles the initial burden lies on the workman to prove his employment in the establishment of the Management and his continuance in service for more than 240 days in a calendar year for raising a dispute under the Industrial Disputes Act. In view of pleadings of the Management in its written statement that the workman was given a contract job of one year in the year 1994 and the Management's document in Ext.-B & C, I do not hesitate to hold that the workman was under employment of the Management at-least in the year 1994 and from 7.4.1999 to 31.10.2001. Ext.-B & C reveal that the workman was under employment of the Management in the above period. That apart, it is emerging from the oral testimony of the workman and copies of documents as mentioned earlier that he was issued with experience certificate by the officers of the 1<sup>st</sup> Party-Management for a different period like in the year 1992, 1994 and 1996. Copy of account slip of his E.P.F. contribution indicates that he was working in Belkundi Iron Mines of the 1<sup>st</sup> Party-Management in the year 2001-2002. He was issued with employment card under the signature of the officers of the Management. His letter written to the General Manager of the Management vide Ext.-7 further reveals that he made a representation for regularization of his service claiming to have been employed from the year 1992. Though, the document is a unilateral one, the contents of the same cannot be out-rightly rejected on account of any specific denial by the Management that the experience certificates or other documents were not issued by its officials.

7. Management witness has claimed in his oral testimony that the workman Shri Patra was appointed and worked as a contract labour in the year 1999 in its mine at Bhadrasahi Mines, Roida and M/s. Kabita Patra was the contractor through whom he was engaged in the mines. But, not a single scrap of paper is filed to show that M/s. Kabita Patra was ever given any work order for supplying contract labour. Moreover, the E.P.F. accounts slip under Ext.- 3 discloses

that the O.M.D.C., Thakurani Mines contributed the employer share for the period from 2001 to 2002. Undisputedly Belkundi Thakurani Mines and Bhadrasahi Mines belongs to the 1<sup>st</sup> Party-Management. M.W.-1 has admitted that Shri Patra was issued with a P.F. accounts slip being shown as a workman of O.M.D.C. Mines at Belkundi. It is not seriously disputed by the Management that Shri Patra is allotted with a quarters of the Management. Besides, the employment of the workman in the establishment of the Management is impliedly getting support from the oral testimony in para-10 of the Management witness. The witness has categorically stated that on completion of contract job period the disputant was appointed and worked as a contract labour through contractor M/s. Kabita Patra in Bhadrasahi Mines. The P.F. contribution was made through the Management of O.M.D.C. as the contractor was not having any provident fund allotment number/code. Since the Management has failed to file any document or lead any evidence to establish that M/s. Kabita Patra was issued with any work order, it shall be presumed that Shri Patra was working in Belkundi Mines directly under the employment of the Management. It is also coming from the record that Shri Patra was continuing in service when the reference was made to this Tribunal and it is alleged by the workman at the time of recording his evidence that he was refused employment and salary with effect from 1.6.2010 during pendency of the present reference and it is claimed by him that such refusal of employment is a violation of provisions of Section 33 and 33-A of the I.D. Act. In view of such evidence adduced from the side of the Management it can be safely inferred that though, the workman fails to furnish any document relating to his initial appointment in the organization of the Management, the evidence oral as well as documentary as mentioned above lead to an irresistible conclusion that the workman is in employment of the Management at least from the year 1994 and he was discharging different duties in different capacity either in the establishment of the Management or in the mines belonging to it. His employment appears to be temporary one but, at the same time it cannot be over-sighted that he continued in the employment of the 1<sup>st</sup> Party-Management at least from the year 1994, if his employment is not accepted from the year 1992 due to want of any authentic document like appointment letter and documents relating to disbursement of his wage. His service seems to have been utilized as Typist, Office Assistant or in the capacity of Supervisor in the mining activities of the Management. Thus it can be safely inferred from the oral and documentary evidence of the parties that the 1<sup>st</sup> Party-Management employed Shri Patra as a casual workman at least from the year 1994 onwards till alleged refusal of employment to him in the year 2010 during pendency of this reference.

8. As it appears from the written statement and evidence of the Management that, regularization of service of Shri Patra is resisted on two counts. The first stand of the Management is that Shri Patra was not employed by the Management in any capacity and in any point of time except a contractual job for a period of one year in the year 1994. In view of my conclusion in the foregoing para this stand of the Management has no merit and force. The Management has also opposed the regularization on a contention that it has its own rules and regulations for recruitment of its staff. Being a Government of India undertaking it is required to adhere to such rules and regulations while giving appointments in its office. It has also been argued that in view of settled principles of the Hon'ble Apex Court enunciated in the case of State of Karnataka –versus– Uma Devi service of Shri Patra cannot be regularized since his initial appointment, if any, was not in accordance to the recruitment rules and regulations and his appointment was not against any sanctioned posts. On the contrary it has been pleaded and alleged by Shri Patra during recording of his evidence that one Mahendra Patra, Electrician, has been regularized in service in 2004. According to him the services of Shri Debakanta Rath, Shri Manoj Biswal, Shri Samarendra Panda, Shri Ranjan Dehury, Shri Ranjit Kumar Jena, and 42 others were regularized in the year 2004 though they joined subsequent to the joining of him. He has also asserted that 190 employees from M/s. K.D.S. Company, Ramgarh and M/s. Escort Company, Jharkhand were given regular appointment by the Management ignoring his regularization claim. Though not a single scrap of paper has been brought to the record to substantiate the aforesaid assertions, the Management witness has admitted in his cross examination that 190 employees were given employment subsequent to denial of employment to Shri Patra. But, the pleading and evidence of the disputant workman is totally silent as to the mode of his selection and appointment in the office of the Management. It has not been claimed that he was given appointment in a due process of recruitment or his initial appointment was against a sanctioned post. Rather, it is emerging from the evidence and documents presented by both the parties that his appointment was purely temporary in nature and he was allowed to continue against such casual employment for doing different works. It is well settled that a temporary employee has no right to the post and if an employee is not appointed against a sanctioned post he cannot claim for regularization for any post. As per the Hon'ble Apex Court that unless the appointment is in terms of relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. Keeping the above principles in view and the principles set out by the Hon'ble Apex Court in the case of State of Karnataka –Versus– Uma Devi I am not inclined to give any positive direction to the Management for regularization of service of the disputant workman merely on the ground of his continuing in service from the year 1994.

9. At the same time it cannot be over-sighted that the Management has not taken or denied the contention of the disputant workman that several casual workmen in similar footing to him have been absorbed by the Management. Further, in the case of Ajaypal Singh –versus– Haryana Warehousing Corporation reported in 2015 (2) SCC (L&S) 279 the Hon'ble Apex Court that the decision of the Hon'ble Apex Court in the case of Uma Devi does not denude the

industrial and labour courts of their statutory power to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item-6 of Schedule-4 of the I.D. Act where the posts on which they have been working exists. The said decision cannot be held to have over-ridden the powers of the industrial and labour court in passing appropriate order once unfair labour practice on the part of the employer is established. The I.D. Act prohibits unfair labour practice on the part of the employer in engaging employees as casual and temporary employees for a long period without giving them the status and privileges of the permanent employees. Coming to the case at hand it is on the record that the workman was given temporary employment in the year 1994 and allowed to continue till May, 2010 being entrusted with different duties. It is also emerging that neither provisions of Section 25-F was complied with nor express approval of this Tribunal is taken in view of the pendency of the reference case before dispensing with his service. Though, the said matter is not in the purview of this reference case, it cannot be over-looked from the schedule of the reference that the Tribunal is also required to answer about the relief to which the disputant workman is entitled to? Besides, the workman has a right to raise a dispute with regard to such refusal of employment to him. Hence, to avoid multiplicity of litigation it is felt necessary to give following direction.

10. As the workman is found to have been retrenched from service during pendency of the reference without due compliance of the provisions of Section 25-F of the Act and without express permission of this Tribunal, the disputant workman is entitled to be reinstated against the post in which he was employed prior to his retrenchment/alleged disengagement with fifty percent back wages. Further, the Management is at liberty and competent to take action in regard to the regularization of service of the disputant workman keeping in view the contention that temporary/casual workers in similar footing to the disputant workman have been regularized. The award is to be implemented within two months from the date of notification of the award.

11. The reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 982.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ऑयल इण्डिया लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 2/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-30025/4/2004-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 11th April, 2017

**S.O. 982.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2005) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Oil India Limited and their workman, which was received by the Central Government on 03.04.2017.

[No. L-30025/4/2004-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

**I.D. 2/2005**

Reference No. L-30025/4/2004-IR(M) dated: 9.12.2004

General Secretary (Sh. Hari singh)  
S/o Shri Mool Singh  
Rajasthan Oil Casual Employees Union  
Hanuwant, B-61 BJS Colony,  
Jodhpur (Raj.).

V/s

1. The Chairman-cum-Managing Director  
17, Parliamentary Street, Allahabad  
Bank Ltd., New Delhi.
2. The General Manager,  
Oil India Ltd. (Raj.) Project,  
8, Residency Road, Jodhpur. (Raj.).

**Present :**

For the applicant union : Sh. Yogesh Sharma, Adv.

For the non-applicant : Sh. Rajesh Jain, Adv.

**AWARD****16.2.2017**

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication vide order dated 9.12.2004 which reads as under:-

**“Whether the demand of Rajasthan Oil Casual Employees Union (CITU) for termination of contract between the management of Oil India Ltd. and 20 labourers as mentioned in Schedule A and for absorption of these labourers by the management of Oil India Ltd. justified? If so, to what relief the concerned workmen are entitled?”**

**Schedule-A**

S.N	Name	Designation	Date of joining	Place of posting
1	Sh. Hari Singh	Tele Oper	16.4.91	Jodhpur
2.	Sh. Ridmal Singh	Helper	1.4.89	Jodhpur
3.	Sh. Prabhu singh	Helper	25.11.89	Jodhpur
4.	Sh. Loon singh	Helper	1.2.88	Jaisalmer
5.	Sh. Deva Ram	Helper	1.8.87	Jaisalmer
6.	Sh. Padam singh	Helper	17.3.86	Jaisalmer
7.	Sh. Daulat singh	Helper	2.2.87	Jaisalmer
8.	Sh. Shambhu Nath	Helper	1.9.85	Jaisalmer
9.	Sh. Mansingh	Helper	1.7.89	Jaisalmer
10.	Smt. Kiran Devi	Helper	1.2.91	Jodhpur
11.	Sh. Aadu Singh	Chowkidar	20.12.87	Jodhpur
12.	Sh. Khangar Singh	Chowkidar	17.7.85	Jodhpur
13.	Sh. Kushum Lal	Chowkidar	18.2.92	Jodhpur
14.	Sh. Sukhvir Singh	Chowkidar	16.9.91	Jodhpur
15.	Sh. Sangaram	Chowkidar	1.8.91	Jodhpur
16.	Sh. Ramswaroop	Chowkidar	1.12.86	Jodhpur
17.	Sh. Govind	Chowkidar	1.12.90	Jodhpur
18.	Sh. Gordhan	Chowkidar	3.12.91	Jodhpur
19.	Sh. Sunil	Chowkidar	-	Jodhpur
20.	Smt. Geeta Devi	Peon	-	Jodhpur

2. According to statement of claim brief facts of the case is that in pursuance of the judgement order dated 21.9.2004 passed by Hon'ble Rajasthan High Court at Jodhpur in D.B. civil special appeal No.719/2001 applicant

union raised an industrial dispute before the Central Government & the Central Government after its subjective satisfaction referred the present reference as mentioned above for adjudication before this tribunal.

3. Further, according to statement of claim the above mentioned 20 members of the petitioner union related to the referred dispute are working with respondent Oil India Ltd. & discharging their duties since the date of their joining as indicated in Schedule 'A'. It is important to note that as per para 4 of the statement of claim the above mentioned 20 workmen though working under supervision of officers & employees of the Oil India Ltd but they are artificially employed through the contractor respondent No.3. The work carried out by the workmen is of continuous & perennial in nature & in real terms they are performing the duties of respondent No.2 Oil India Ltd which is a company incorporated under the Company Act, 1956 & covered under the definition of 'State' for the purpose of Article 12 of Constitution of India. According to contention of the petitioners despite working for the last 20 years they are without any status & their continuous working for so many years is indicative of the fact that there is existence of substantive vacancy with the respondent No.2 & Respondent No.3 is merely a camouflage to adopt unfair labour practice & violate the legal right of the petitioners.

4. It has been further alleged that respondent Nos.1 & 2 are the principal employer under whose supervision & guidance petitioners are discharging their duties & respondent No.3 the contractor is merely a supplier of labour who has nothing to do with functioning of respondent No.2. In Last 20 years contractors have been changing but the respondent No.2 is the same person as principle employer.

5. Referring to Section 10 of Contract Labour (Regulation and Abolition) Act, 1970 which deals with prohibition of employment of contract labour it has been alleged in para 6 of the statement of claim that according to section 10 of the said act it is clear that appropriate Government has right to prohibit the employment of contract labour in certain industries or establishment. For Oil India Ltd. central government is the appropriate authority under section 2(a) & respondent No.3 is the contractor under section 2(C) of the above quoted act of 1970. The Central Government of India by its notification dated 9.12.1976 has prohibited the employment of contract labour w.e.f. 1<sup>st</sup> March, 1977 for sweeping, cleaning, dusting & watching of buildings owned & occupied by such establishments in respect of which appropriate Government is the Central Government under the act.

6. It has been further alleged that the conclusion of above legal provision & notification dated 9.12.76 mandates that in the nature of work as mentioned above & in respect of oil fields there is prohibition to engage the worker through contractor for the purpose of sweeping, cleaning, dusting & watching of building. Petitioners are discharging the same duties under the principal employer respondent Nos.1 & 2 through the contractor.

7. It has been reiterated that long continuation of petitioners with the respondent No.2 establishes the availability of substantive vacant post & inclusion of contractor is merely a camouflage to violate the legal provisions & the legal rights of the workers. In above circumstances, petitioners legally become entitled to absorption on the roll of the respondent Oil India Ltd & the veil has to be lifted. The contract between the principal employer & contractor is not genuine as the nature of work is continuous & perennial & engagement of the petitioners is not only against the legal provision but also against the judgement of the Hon'ble Supreme Court.

8. In para 8 of the claim it has been alleged that several representations made to Oil India Ltd for absorption & regularisation of the petitioners till filing of statement of claim remained unyielding. It has been further alleged that settlement has been arrived at between the union & the management only with respect to the salary & wages & no decision has been taken by the management with respect to absorption & regularisation of the services of the workers. In the settlement itself it has been written that as no settlement could take place on issue of regularisation hence, matter has been sent for reference. Applicant union has further alleged, "..... It is further stated that if to some extent the settlement is contrary to any legal provision, act or statutory rules then it will not have any legal consequence and the statutory provisions will certainly prevail on such settlement or agreement because it is settled legal proposition of law that no agreement or settlement can be made against the provisions of any act, statutory rules, statutory provisions and statutory circulars/notifications. In the instant case the contract labour (Regulation and abolition) Act 1970 and the notification dated 9.12.1976 will certainly prevail on any sought of agreement or settlement which violates their provisions because these are the beneficial legislations/notifications."

9. Further, in para 9 of the statement of claim it has been alleged that in the settlement dated 4.5.1998 between union & the principal employer respondent it has been stated that in future as & when vacancy arises in Rajasthan project of Oil India Ltd members of the union will be given preference in selection subject to their suitability & eligibility. The long continuation of the petitioners itself establishes the fact that the substantive vacant posts are available with the respondent but after settlement no action has been taken for absorption & regularisation. Respondent No.2 started new project at Bikaner as well as in the gas field but not a single petitioner has been absorbed which indicates the malafide intention on the part of the respondent No.2. Petitioners are discharging the same duties since last 15- 20 years which are discharged by regular employees under the respondent No.2 but they are not getting the benefit of regularisation whereas all petitioners are eligible & suitable for absorption/regularisation at their respective



posts. Petitioners in above circumstances are illegally forced to work on the roll of an artificial contractor who has nothing to do with the functioning of the petitioners & the respondent No.2. Respondent No.2 has absorbed about 60 workers on previous occasions out of which 8 persons in year 1991, 8 persons in the year 1992, 8 persons in the year 1994, 16 persons in the year 1995 & 19 persons in the year 1996 were absorbed. 20 petitioners have not been absorbed & regularised till the date of filing the statement of claim & since last 8 years not a single person has been regularised though ample substantive vacant posts are available.

10. It has been alleged in para 12 of statement of claim that engagement of the petitioners through the contractor is bad in law as it is against the statutory provision & notifications as the contractor is merely a camouflage. According to the recent judgements pronounced by Hon'ble Supreme Court Of India, labour court is empowered to look into the fact that the engagement of the worker through the contractor is a genuine labour contract or it is merely a camouflage & if the labour court comes to the conclusion that the system of contract labour had been adopted to violate the right of the worker who are working & discharging the duties against the work which is continuous & perennial in nature then the labour court may lift the veil & may hold that the workers engaged through the contractor are entitled to be absorbed on the roll of principal employer. In the instant case in accordance with the judgement of Hon'ble Supreme Court in the case of Steel Authority of India Ltd, petitioners are entitled to be absorbed by the respondent No.2 with all consequential benefits & continuity of service.

11. The petitioners have prayed that award be passed by tribunal to the effect that petitioners named in schedule of the reference be absorbed by respondent No.2 with all consequential benefits & continuity in service from their respective initial date of engagement.

12. Reply to statement of claim by respondent Nos.1 & 2 constitute two distinct parts wherein part 1 contains preliminary objections & part 2 contains para wise reply to statement of claim. In para wise reply to statement of claim para 1 of the statement of claim has been admitted to the extent that petitioner union is a registered union & reference for adjudication has been made in compliance of judgement & order dated 21.9.2004 by Hon'ble Rajasthan High Court. About reference order dated 9.12.2004 it has been alleged that Central Government has not applied proper application of mind & dispute has been referred without its subjective satisfaction. It has also been mentioned that the dispute is not covered within the definition of section 2(k) of I.D.Act, 1947 hence the reference is 'bad in law', not maintainable & liable to be set aside. Further, it has been alleged that in the present case the office of the answering respondent is duly registered under the Rajasthan Shops and Commercial Establishment Act, 1958 and therefore the appropriate government in case of office establishment of the answering respondent is "State Government". The Reference made by the Government of India is "bad in law" being beyond its jurisdiction, therefore, is not maintainable and no proceedings on the said Reference deserves to be proceeded with by this Hon'ble Tribunal.

13. Content of paras 2, 3, 4, 5, 7, 8, 9, 10, 11 & 12 have not been admitted in the manner as stated in statement of claim. Against para 6 of statement of claim it has been alleged that content of statement reproducing section 10 of Contract Labour (Regulation & Abolition) Act, 1970 is not denied but rest of the contents are denied. It has been further submitted in reply to para 6 of statement of claim that, "..... the office to which the members of petitioner Union are attached under the concerned contractor being their employer is registered under the Rajasthan Shops and Commercial Establishment Act 1958 and for the purpose of the said office, Central Government is not the appropriate government. On the contrary, it is the State Government which is the appropriate government for the purpose of the said office, which is not situated at the surface of mine for which so far till date, the Appropriate Government has not issued any Notification prohibiting the employment of contract labour. The Notification dated 9.12.1976 is neither applicable and/or attracted in the case of the answering respondents nor it has been correctly interpreted by the petitioner Union. Even the petitioner Union has not enclosed/ placed on record any such notification which might have been issued by the Appropriate Government prohibiting the Contract Labour in the matter of answering respondent. On the contrary the Appropriate Government itself has issued the certificate to principal employer as well as license to the concerned contractor establishment under the Contract Labour (Regulation and Abolition) Act, 1970, which itself demonstrate that the work for which the contract labourers have been deployed through contractor is not of permanent and/ or perennial in nature and that is why they have been rightly deployed through the contractors."

14. In para 2 it has been further alleged that the correct position about entire factual & legal aspect of the matter has already been explained in para 1 of the reply hence, the same is not being repeated again & may be treated as reply to this paragraph also. Against para 3 it has been alleged that it is denied that the employees listed in the scheduled to the reference have been working with the management of Oil India Ltd and/ or they are working under the guidance & supervision of the answering respondents. It has been further alleged that certain unskilled & skilled nature of jobs are outsourced due to the temporary nature of the establishment & accordingly notification inviting tenders are issued & interested bidders submit the tenders to undertake the job under their supervision & control. These 20 labourers came through successful bidders for which reason they can not claim absorption in the establishment of the principal employer. They have been employees of their employers at different time. As per knowledge of the answering respondents the 20 members of individuals listed in schedule were working for different periods under supervision &

control of different contractors but that too not for 15 to 20 years. The relevant particulars about their natures of job, date of joining, place of work shall be placed on record at the appropriate stage before this tribunal. Against para 4 it has been submitted that it is wholly denied that individuals listed in para 3 of the claim have been working under the direct control & supervision of answering respondents & contrary to this they have been working with concerned contractors as their employer under their supervision & control. It is not correct that employees were artificially employed through the contractor respondent No.3. Further it has been alleged that it is worthwhile to mention that since the project of the answering respondent is yet to be established permanently & no work of permanent nature is being done here, unless viability of the project is proved herewith as such, it is not admitted that work which has been discharged by the members of the petitioner union is continuous & perennial in nature and/or in real terms they are performing the duties of respondent No.2. The contention of the petitioner that the respondent No.3 is merely a camouflage smack and has been taken as an intermediate just to adopt the unfair labour practice and to violate the legal rights of the labourers is vehemently denied being far from truth. This fact is also denied that the substantive vacancy is available as alleged by the petitioner Union in this para of the Statement of Claim. With regard to the fact that Oil India Limited is a 'State' under Article 12 of the Constitution of India is not admitted. It is submitted that it is not a 'State' and does not come under Article of 12 of the Constitution of India. Against par 5 of statement of claim it has been alleged that the reply with regard to facts mentioned in this para has already been given in foregoing paragraphs of the reply in view of which, the allegations mentioned in this are incorrect and hence denied. The members of the petitioner union have been discharging their duties under the control and supervision of concerned contractor who in real terms have been their employer under the Industrial Disputes Act, 1947 and also the Contract Labour (Regulation and Abolition) Act, 1970.

15. Against para 7 of statement of claim it has been submitted, ".....that Oil India Limited is engaged in exploration, exploitation and transportation of crude oil in different parts of the country after obtaining Petroleum Exploration License and MEL from concerned State Government. The operation of Oil India Limited (Rajasthan Project) is at the International Border in the District of Jaisalmer, Bikaner and Sriganganagar. It is further submitted that gestation period from the commencement of the exploration till the production is very high and longer comparatively to other industries because it involves seismic survey, interpretation of data and release of drilling location, then drilling and thereafter production after making all infrastructure created as per the International Bench mark. The time period involved in such operation is very high, as such, the facts mentioned by the petitioner Union in this para are not correct. The contract between the principal employer and the contractor cannot be said to be artificial and/or a camouflage smack, on the contrary it is a genuine contract in as much as the same is in accordance with the legal provisions of the Act of 1970 as explained herein above and also in accordance with the principle laid down by the Hon'ble Apex Court. It is pertinent to mention that from 1996 onwards till date all the recruitment are frizzed by the Central Government and there is no vacancy and vacant post at present. It is further submitted that the answering respondents, even in the past also gave preference to suitable and eligible employees of the contractor once the vacancy was released but no absorption was made even in the past also because due to obvious reason that neither the law of land permit without complying various terms and conditions of eligibility for recruitment nor back door entry by way of absorption can be permitted by the answering respondents. It is further submitted that the answering respondents have never been of the object/intention to violate the legal provisions nor the legal rights of the employees have ever been violated and/ or flouted. The principle of lifting the veil as alleged by the petitioner union in this para of the claim is not attracted in the case in hand, which is a perfect case of genuine contract under the CL (RA) Act, 1970."

16. Against para 8 of statement of claim not admitting & denying the same as stated in statement of claim it has been submitted that in past petitioner union had raised the demand/dispute relating to absorption & regularisation of the contract labourers along with other demands relating to various facilities & payments etc. & a legal & statutory settlement in accordance with section 18 of I.D. Act was entered into & executed with Contract Labour Union, Management of Oil India Ltd. & concerned contractor who is the employer of the applicants in which it has been agreed that wages for the contract labourers shall be same & similar to that of employees of the principal employer. It has been further alleged that the liability of the principal employer is already mentioned under the CL(RA) Act, 1970 which is being complied in letter and spirit. It is worthwhile to mention that in the Agreement/Settlement itself it was also stipulated and agreed by the principal employer that in case vacancy arises, the contract labourers will be given preference subject to their eligibility and fulfilling other criteria including other statutory conditions as applicable in the case of answering respondents. It is not out of place to mention that the petitioner Union has not come with clean hands before this Hon'ble Court particularly, in the matter of agreement/settlement dated 4.5.98 referred to in this para, wherein the petitioner union has mentioned that in the settlement arrived at between the Union and the Management and also the concerned contractor, no decision has been taken up with respect to absorption of the contract labourers. A bare perusal of the said Settlement dated 4.5.1998 goes to show that in the said settlement the Union categorically and without any ambiguity has agreed that the charter of demand has been amicably settled in full and final pertaining to the contract labourers including the demand of absorption and it has been agreed to by the parties that contract labourer/ union will not raise any dispute in the matter of absorption/ regularisation during the operation of the settlement. The above referred settlement vide dated 4.5.1998 is still in existence and same has not been terminated and

binding on parties to the settlement and therefore having the statutory force in view of section 18 and 19 of the Industrial Disputes Act, 1947 the petitioner Union is not entitled to raise any objection in this regard particularly, when all the benefits and facilities under the said settlement have been availed by the contract labourers and now at this stage cannot resile from their own admission. They are estopped to assail a particular term i.e. regarding absorption and regularisation accepting the other terms of the settlement. Otherwise also the legality of the said settlement is neither the subject-matter of the Reference nor the settlement dated 4.5.1998 can be said to be illegal and against the provisions of the Act, Rules etc. etc. Once a legal and valid settlement has been executed and any party has accepted/availed the benefits under the said Settlement/Agreement, it is binding and have supremacy in view of object and preamble of the Industrial Disputes Act, 1947. It is incorrect that the settlement referred to above is in any way contrary to any legal provisions.

17. Against para 9 of statement of claim it has been alleged that settlement dated 4.5.98 arrived at between the parties is admitted wherein it has been stated that as & when vacancy arises in Rajasthan Project of Oil India Ltd. in future, the contract labourers will be given preference in recruitment subject to their eligibility & suitability however, it is submitted that at present there is no vacancy & vacant post & all the recruitments have been freezed from 1996 onwards till the date. It has been further alleged that it is necessary to mention that gestation period from the commencement of exploration till the production is very high & longer operative to other industry because it involves seismic survey, interpretation of date & release of drilling location then drilling & thereafter production after making all infrastructure created as per international bench mark the time period involved in such operation is very high, as such, being a peculiar nature of operation/project a very high and long period is bound to taken to establish commence the production. So far as absorption and regularisation of contract labour is concerned, it is otherwise also neither permissible under the law nor the members of the petitioner Union even by virtue of settlement dated 4.5.98 have any entitlement for absorption and regularisation of the services as at the most they have preferential treatment in the matter of selection in future if vacancy arises that too subject to their suitability and eligibility. Therefore, question of absorption and regularisation of their services can never arise and in the facts and circumstances explained herein above no action and/or role of the respondent No.2 can be said to be malafide on its part. Against para 10 of statement of claim not admitting the same it has been submitted that detailed reply has already been given in foregoing paragraphs which may be treated as reply to para 10 of statement of claim. It has been further submitted that it is incorrect that contract labourers are illegally being forced to work on the roll of an artificial contractor.

18. Against para 11 of statement of claim it has been submitted that it is incorrect to say that in the past any of the labourer was absorbed as result of vacancy. On the contrary, whenever the vacancy was released, the contract labourers were given preference subject to suitability and eligibility. No absorption was made due to obvious reason that the law of land does not permit so and therefore it is to be submitted that no back door entry by way of absorption is done by the answering respondent till now. So far as 20 members listed in the schedule are concerned, it has already been made clear that in view of settlement dated 4.5.98, as and when vacancy will be released, subject to suitability and eligibility criteria and in accordance with the Rules and Regulations, they will be given preference in the matter of selection.

19. Against para 12 of statement of claim it has been alleged that contract between the opposite party & contractor is a genuine contract & not a mere camouflage smack. The contract labourers of the present case are not working against the work which can be said to be of perennial nature & therefore, they are not entitled to be absorbed on the roll of principal employer. Even Hon'ble Supreme Court of India in the case of Steel Authority of India Ltd. has clarified the position in view of which, the contract labourers do not have any right to be automatically absorbed with principal employer. It has been further alleged that on expiry of the period of existing contract answering respondents invite tender for the future work & accordingly a successful bidder is selected for performance of the job as per contract agreement. Since, the project of the answering respondents is yet to be established permanently, no permanent nature of work is being done here unless viability of project is proved herewith. It has been alleged that Rajasthan Project of the answering respondents is a high risk, high cost & high tech & finally high rewards if successful which requires managing the affairs appropriately in course of establishing the viability, therefore, as per prudent business establishment under the established viability of the project the Oil India Ltd. is entitled to work under the existing system. The petitioner union is not entitled for any sort of relief in the present statement of claim submitted by them pursuant to reference order dated 9.12.2004. It has been prayed that statement of the claim of the applicants may kindly be dismissed with cost & be declared that the contract labourers through its petitioner union is not entitled to any relief as claimed in the statement of claim & a 'No Dispute Award' is passed in the matter.

20. In preliminary objections the first objection is that Oil India Ltd (Rajasthan project) has been registered under the Rajasthan Shops and Commercial Establishment Act, 1958 hence, the appropriate Government in present matter is Government of Rajasthan & the office of the opposite party is not situated at the surface of the mine hence, the reference to this tribunal by the Central Government has not been made by 'appropriate Government' hence, reference is not maintainable. The second submitted objection relating to reference made by Central Government is that neither the demand for termination of contract between management of Oil India Ltd. & 20 labourers of Schedule 'A' can be

considered to be an 'Industrial Dispute' as defined in section 2(k) of the I.D.Act, 1947 nor the demand for absorption of these labourer by opposite party can be termed to be an 'Industrial Dispute' within the meaning of section 2(k) of I.D.Act, 1947 hence, the reference is bad in law & not maintainable & deserves no adjudication.

21. The third preliminary objection is to the effect that there exists no employer- employee relationship between Oil India Ltd. & 20 labourers hence, on this ground also the reference is bad in law not liable to be adjudicated & beyond the jurisdiction of the tribunal.

22. In the fourth preliminary objection it has been pointed out that the dispute under reference relates to absorption of applicants mentioned in Schedule 'A' of the reference. Earlier to this reference a similar demand was raised by applicant union vide their letter of demand dated 10.12.96 & on failure of conciliation proceeding the conciliation officer vide letter dated 27.11.97 submitted his failure report to Secretary, Ministry of Labour, Government of India. The Hon'ble Ministry after application of mind did not refer the dispute for adjudication on the basis that dispute is not covered under provisions of Industrial Disputes Act, 1947. Subsequent to that on 2.1.98 a charter of demand cum notice was submitted by Rajasthan Oil Employees Union, wherein beside other demands, the demand of absorption of above 20 workers as mentioned in Schedule 'A' was also raised again & after negotiations a memorandum of settlement dated 4.5.98 was executed between Rajasthan Oil Casual Employees Union (the Union of the applicants), Management of Oil India Ltd. & concerned contractor as employer of the above said 20 workers mentioned in Schedule 'A'. Facilities & benefits provided under settlement dated 4.5.98 was agreed to be given only on withdrawal of dispute of absorption of contract labourers from the office of Assistant Labour Commissioner (Central), Ajmer as well as Ministry of Labour & in compliance of the agreement a letter dated 4.5.98 was forwarded by concerned union informing the labour department & the Government that the demand of absorption regarding contract labourers be treated as settled as full in terms of settlement dated 4.5.98 among the parties under section 18 read with section 2(p) of I.D.Act, 1947. Further it has been alleged that the memorandum of settlement dated 4.5.98 entered into by & between the parties are still binding on them in view of section 18 & 19 of I.D. Act, 1947 & has not been terminated so far hence, applicants mentioned in Schedule 'A' in reference have no legal right to raise demand regarding their absorption therefore, neither the reference is maintainable being bad in law nor this tribunal has jurisdiction to entertain & adjudicate the reference.

23. In the preliminary objection No.5 it has been alleged that petitioner union has suo-moto impleaded respondent No.3 Babulal Parihar who is concerned contractor & necessary party in the case as employer for the applicants but for impleading respondent No.3 petitioner should make effort to approach the government to get the reference amended for incorporating the name of Babulal Parihar as party to the case or petitioner should move an application before the tribunal with prayer to implead the respondent No.3 as necessary party. In absence of necessary amendment in the reference order from the Ministry or permission from the tribunal through an appropriate application applicant on his own cannot implead any new party hence, proceedings initiated on defective statement of claim is improper & illegal & petitioner should be asked to rectify error at this stage itself to save the valuable time of the tribunal.

24. In para 6 of the preliminary objection it has been alleged that neither under provision of Industrial Disputes Act or under CL (RA) Act, 1970 absorption of contract labour by principal employer is permissible nor applicants are entitled to seek relief of absorption from the tribunal.

25. In para 7 of preliminary objection it has been alleged that, ".....as per present activity involved in the project all works except the production of gas from Tanot fields is for exploration & of temporary nature of jobs where permanent engagement of these may not be required. For the Tanot field and the exploratory work adequate strength of employees is available. The respondent has been continuing the labourers under the contract as a gesture to continue the generated employment and not to discontinue the present arrangement. In case the situation do not warrant continuation of this arrangement the same may be discontinued." It has been submitted that all the objections individually & jointly without prejudice to each other go to the root of the matter including the jurisdiction & also the maintainability of the proceeding.

26. In rejoinder filed by applicant against reply to statement of claim by respondent Nos.1 & 2 it has been submitted against preliminary objection No.1 that Oil India Ltd. is an industry under the provision of Industrial Disputes Act engaged in manufacturing process hence, objection regarding registration of the respondent company under Rajasthan Shops & Establishment Act, 1958 is frivolous & accordingly Central Government is the appropriate Government which has referred the dispute for adjudication. Against preliminary objection No.2 it has been alleged that petitioner union has raised the dispute with regard to elimination of artificial contractor between the workers & the principal employer. The dispute relates to the status of the worker & their service conditions hence, the dispute is an industrial dispute under the provision of I.D.Act, 1947. Against preliminary objection No.3 it has been alleged that relationship between the workers & respondent Nos.1 & 2 is of workman & employer respectively hence, objection deserves to be quashed. Against preliminary objection No. 4 it has been alleged that reference has been made by respondent that dispute was not referred by Central Government in 1997 but that does not bar the Central Government to refer the dispute subsequently if the Government is of the opinion that industrial dispute is existing. It has been

further submitted that in the settlement dated 4.5.98 assurance was given to absorb the 20 workmen but after laps of about 7 years was taken by respondent hence, petitioner union had no option but to raise the present dispute before the authorities. It has been further alleged that, “..... no objection with regard to relationship of employer and employee was raised by the respondent No.1 & 2 at the time of settlement hence now the respondents are being restrained to raise such a frivolous objection. It is also worthwhile to mention here that even if any settlement is arrived at between the parties contrary to the statutory provisions then the parties concerned are not being restrained to raise the dispute to protect their legal and statutory rights. The petitioner union is bound by the settlement upto the extent of salary and other benefits given to them at par with the regular employees of the respondent No.1 & 2 but their legal rights under the statutory provisions of absorption on the roll of principal employer cannot be taken away because they are working since last 15-20 years and discharging the work of the respondent No.1 & 2 under their supervision.”

27. In reply to preliminary objection No.5 it has been alleged that tribunal has ample power of impleadment after issue of reference order by Central Government, thus, there is no need to approach the government to get amendment in the reference because term of reference is not required to be amended. Accordingly, objection raised by respondents is frivolous. Against preliminary objection No.5 & 6 it has been alleged that engagement of workers for 15 to 20 years establishes itself that nature of work is permanent hence, it is incorrect on the part of respondents to say that nature of work is temporary.

28. In rejoinder, reiterating the allegations in the statement of claim it has been alleged that respondent company is an industry and Central Government is the appropriate government to refer the dispute. In para 3 of rejoinder it has been further alleged that engagement of contractor between worker & respondent No. 1 & 2 is merely a camouflage to adopt unfair labour practice & respondents have absorbed 16 workers vide memorandum of settlement dated 11.8.94 before ALC(Ajmer) Cum Jodhpur who have been working through contractor.

29. In para 4 of rejoinder it has been alleged that Central Government is the appropriate government for making reference in the matter. Further, it has been alleged that notification dated 9.12.76 is attracted in the present case & even otherwise according to the provision of CL(RA) Act, 1970 & law laid down by Hon'ble Supreme Court the artificial contract has to be abolished & the workers of the petitioner union deserved to be absorbed on the roll of principal employer i.e. respondent No.1 & 2. In para 5 of rejoinder it has been alleged that respondents have made false statement that in past no absorption of contract workers was made because 16 workers vide memorandum of settlement dated 11.8.94 have been absorbed on the basis of their seniority only & absorption on the basis of seniority does not amount to back door entry but it is only the policy matter. In the present case workers of the union are working since past 15-20 years without any status & they deserve to be absorbed on the roll of principal employer. In para 6 of rejoinder it has been alleged that in settlement dated 4.5.98 respondents agreed to give preference to the workers of petitioner union but even after a gap of about 7 years not a single worker has been absorbed. Further it has been alleged, “..... It is correct to say that no decision was taken up in the above settlement with regard to absorption and even otherwise no agreement, settlement could run against the constitutional and statutory provisions. The workers of the petitioner union deserves to be absorbed on the roll of principal employer in the facts and circumstances enumerated hereinabove. It is pertinent to mention here that the principle of res-judicata cannot apply or run against the legal and statutory provisions hence the petitioner union is having the right to raise the dispute with regard to absorption and against the arbitrary and whimsical action/inaction on part of the respondent No. 1 & 2. The principle of estoppel has no application in the facts and circumstances of the present case/dispute as the principle of estoppel cannot run against the statutory and legal provisions.”

30. In para 7 of rejoinder it has been alleged that petitioners were not claiming any appointment under recruitment rules but they have raised the dispute regarding their absorption eliminating the artificial contractor which has been engaged by adopting unfair labour practice. It has been further alleged that it is highly surprising on the part of respondents to say that no vacancy is existing with them whereas petitioners are working with respondents since 15-20 years without any break which indicates that continuous and perennial work is available with respondents. It has been further alleged that the question of suitability & eligibility cannot be raised at this belated stage after gap of 15-20 years. In para 8 of rejoinder it has been alleged that petitioners have established the fact that respondent company has absorbed 16 contract labourers vide settlement dated 11.8.94 & in the year 2001, 300 workers have been absorbed as one time major by respondent company in Assam hence, it is incorrect to say that no worker was absorbed in the past. In para 9 of rejoinder it has been alleged that workers deserve to be absorbed on the roll of principal employer because they are working since last 15-20 years which establishes that nature of the work of respondent is permanent & perennial.

31. Based on pleading of the parties following issues for determination were framed by my learned predecessor on 11.7.2005 :-

**Points for Determination**

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|------|--|------|
| I.   | Whether the workmen in question are working with the non-applicant establishment for the last about 20 years and the nexus of employer and employee exist between the contesting parties ? | BOA  |
| II.  | Whether the work discharged by the workmen in question is perennial in nature?   | BOA  |
| III. | Whether the workmen in question are entitled for their absorption in the non-applicant establishment?  | BOA  |
| IV.  | Whether the settlement dated 4.5.98 is still binding upon the contesting parties?  | BONA |
| V.   | Whether the concerned contractor is a necessary party in the dispute ?   | BONA |
| VI.  | Whether the State Government being an appropriate Government in this case, the reference made by the Government of India is bad in law ?   | BONA |
| VII. | Relief, if any.  |      |

32. Witnesses Sh. Khangara Ram, Sh. Prabhu Singh, Sh. Ridhmal Singh, Sh. Sanga Ram, Sh. Gordhan Ram, Sh. Kusum Lal, Sh. Aadu Singh, Sh. Daulat Singh, Sh. Hari Singh Bhati, Sh. Sunil Rawat, Sh. Padam Singh, Sh. Devaram, Sh. Loon Singh, Sh. Ramswaroop, Smt. Kiran Devi w/o Late Sh. Sampat Lal Soni, Smt. Gita w/o Late Sh. Kanhiya Lal, Sh. Govind, Sh. Mansingh, Sh. Sukhbir Singh Yadav & Sh. Sambhunath have filed their affidavits in evidence from applicant's side & have been cross examined by opposite party. Documents in evidence from the applicant side have been filed along with affidavit of each witness separately which are part of their affidavit in evidence.

33. Sh. Narayan Kalla, Deputy Manager, M/s Oil India Ltd. has filed his affidavit in evidence from opposite party & has been cross examined by applicant.

34. Opposite party has filed photocopy of seven documents on 29.8.2005 with index which consists of service agreement No. RCO/ADM/326 between respondent & contractor(Ex-M-106), settlement of memorandum of understanding dated 4.5.98 (EX-M-112), Certificate of registration under Shops & Establishment Act(Ex-M-99), Registration of principal employer, License of M/s SSTs Samiti Ltd., Report of ALC dated 28.3.2001 with letter dated 8.6.2001 & Extension letter dated 24.3.2004 for service of contractor. On 27.3.2006 ten documents with index have been filed by opposite party which include contract agreement between employer & contractor dated 30.11.98 & 17.6.2005, Attendance register of M/s Oil India Ltd. for the period April, 2004 to March, 2005 & Jan, 2006, Muster roll of contractor M/s S.S.T.S.Ltd, Jodhpur for the June, 2004 to Feb, 2005 & for the month of April, 2004, Wage payment register of M/s SSTs Ltd., Jodhpur for the month of May, 2005, Challan deposit of contribution to EPF for the period April, 2004 to Aug, 2004, Sep, 2004 to Feb, 2005 & for March, 2005 & April, 2005 by M/s Sarovar Sharmik Sangh & Sahkari Samiti Ltd., Wage payment register of contractor M/s Ganesh Security Services for the period May, 2005 to Jan, 2006 & overtime payment register of contractor M/s Ganesh Security Services Ltd. for the period May, 2005 to Feb, 2006 & Challan deposit in EPF for the month May, 2005 & Jan, 2006 of contractor M/s Ganesh Security Services Ltd.

35. Heard the argument of learned representative of both the parties & perused the record carefully. Written arguments from both the sides have been filed .

36. Following citations have been referred by learned representative for applicants :-

- (2014) 9 Supreme Court Cases 407 (F.B.), Balwant Rai Saluja ..... Appellants v/s Air India Limited and Others ..... Respondents.
- (2009) 13 Supreme Court Cases 374, International Airport Authority of India.....Appellant V/s International Air Cargo Workers' Union and Another..... Respondents.
- 2014 (143) FLR 666 (Jharkhand High Court) D.B., Workmen, United Coal Worker's Union.....Appellant v/s Employers, Management of Kuju Area of M/s. C.C.Ltd.....Respondents.
- (2011) 1 Supreme Court Cases 635, General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon....Appellant V/s Bharat Lal and Another .....Respondents.
- AIR 1978 Supreme Court 1410, Hussainbai.....Petitioner v/s The Alath Factory Tezhilali Union and others.....Respondents.
- 2015(144) FLR 1012 (Allahabad High Court), M/s. Indian Farmers Fertiliser Co-operative Ltd.....Petitioner v/s Presiding Officer, Labour Court & others.....Respondents.
- 2016 S.C.L.J. 316, General Manager, ONGC, Silchar.....Appellant v/s ONGC Contractual Workers Union.....Respondents.

8. 2005 (105) FLR 416, Kapra Mazdoor Ekta Union .....Appellant v/s Management of M/s Birla Cotton Spinning & weaving Mills Ltd. & others.....Respondents.
  9. 2005- II- LLJ 138 (Madras High Court), Management of EID Party (India) Ltd, Ranipet.....Petitioner v/s Presiding Officer, Labour Court, Vellore and Another.....Respondents.
  10. 2014 (140) FLR 93 (Andhra Pradesh High Court), Power Grid Corporation of India Ltd.....petitioner v/s 17 workers, KHAMMAM & OTHERS.....Respondents.
  11. 2011 (131) FLR 759, Bhilwara Dugdh Utpadak Sahkari Sangh Ltd.....Appellant v/s Vinod Kumar Sharma (Dead) by LR's & others.....Respondents.
  12. W.P. ( C ) 14828/2006 & CMs 2387/2012 & 9739/2012, The management of Ashoka Hotels Ltd. ....Petitioner v/s Their Workmen & another .....Respondents, decided by Hon'ble Delhi High Court on 19.2.2013.
37. Following citations have been referred by learned representative for opposite party:-
1. 2014 LLR 1009 S.C., Balwant Rai Saluja & Anr. .... Appellants v/s Air India Limited and Others .....Respondents.
  2. 2009 LLR 923 S.C., International Airport Authority of India.....Appellants v/s International Air Cargo Workers' Union & Anr.....Respondents.
  3. 2004 (2) LLN 68 S.C., Workmen of Nilgiri Co-operative Marketing Society, Ltd.....Appellant v/s State of Tamil Nadu....Respondent.
  4. 2010 LLR 69 (Jharkhand High Court), M/s Bharat Coking Coal Ltd.....Petitioner V/s Workmen, M/s Bharat Coking Coal Ltd. and Another.....Respondents.
  5. 2008 LLR 344 (Bombay High Court), Bhartiya Kamgar Sena.....Petitioner v/s Udhe India Ltd. and Another.....Respondents.
  6. 2002(I) LLJ 398 (Calcutta High Court), Damodar Valley Corporation.....petitioner v/s Damodar Valley Corporation Canteen Workers' Union and Others.....Respondents.
  7. 2001 (91) FLR 1172 (Gujarat High Court), Bhartiya Karamchari Sangh ...petitioner v/s Oil & natural Gas Corporation Ltd. & others....Respondents.
  8. 2015 LLR 292 (Calcutta High Court), M.M.T.C Ltd....petitioner v/s The Learned Fourth Industrial Tribunal....Respondent.
  9. 2014 LLR 362 (Jharkhand High Court), Usha Martin Limited (Usha Ishmal Division) Ranchi.....Appellant v/s Dashrath Pandey.....Respondent.
  10. 1991 (1) LLJ 46 Supreme Court, (1) Barauni Refineries Pragtisheel Shramik Parishad..... Appellant v/s Indian Oil Corporation Ltd & others.....Respondents & General Secretary, Barauni Telshodhak Mazdoor Union v/s Jt. Chief Labour Commissioner (Central) & Others.....Respondents.
  11. 1994(2) LLJ 590 (Delhi High Court), Bluestar Limited .....petitioner v/s K.S.Khurana & others.....Respondents.
  12. 1980 (1) LLJ 227 (Bombay High Court)(DB), Association of Chemical Workers.....petitioner v/s Wahid Ali & others .....Respondents.
  13. 2014 LLR 1205, Himachal Pradesh High Court, Parvati Koldam Transmission C. Ltd. v/s State of Himachal Pradesh.

### **Decisions on issues**

#### **Issue No. 1.**

38. This issue is to the effect that whether the workman in question are working with the non-applicant establishment for last 20 years & the nexus of employer & employee exist between the contesting parties ?

39. It has been argued by learned representative for the applicant & has also been mentioned in written argument that all the 20 applicants as mentioned in schedule 'A' of the reference are working continuously since last 20 years with opposite party although engaged through different contractors & there is established employer-employee relationship between the parties to proceeding hence, applicants are entitled to be absorbed in the employment of opposite party i.e. principal employer OIL. It has been further argued that contention of the opposite party that

applicants are in the employment of the contractor & they are not the employee of the principal employer is wrong & merely a camouflage. To support the above contention reference has been made to various portions of the statements of the non-applicant's witness Shri Narayan Kalla (O.P.W-1) & various documents referred to the witness O.P.W-1 during his cross examination such as schedule 'A' of the reference, & documents such as identity card, monthly roaster, leave applications, record relating to overtime, work allotment order, transfer order, agreements/settlements executed between the union & opposite party before the Conciliation Officer, appointment on compassionate ground, telecommunication messages sent by officers of opposite party to the concerned workman, interview of some workman for their absorption but not absorbed, documents relating to deduction to provident fund & ESI contribution, documents relating to payment of salary & wages by opposite party to the workmen, leave applications of the workmen & their sanction relating to leave etc. On the point of employer-employee relationship between principal employer OIL & workmen reliance has been placed on the cases reported in (2014) 9 Supreme Court Cases 407 (F.B.), Balwant Rai Saluja ..... Appellants v/s Air India Limited and Others ..... Respondents, 2009 LLR 923 S.C., International Airport Authority of India.....Appellants v/s International Air Cargo Workers' Union & Anr.....Respondents, 2015(144) FLR 1012 (Allahabad High Court), M/s. Indian Farmers Fertiliser Co-operative Ltd..... Petitioner v/s Presiding Officer, Labour Court & others.....Respondents & (2011) 1 Supreme Court Cases 635, General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon....Appellant V/s Bharat Lal and Another .....Respondents. Countering the above argument it has been argued & mentioned in written argument by learned representative for opposite party that as far as the question of working for the period of 20 years by applicants is concerned it has been mentioned in statement of claim by the applicants that they are working through the contractor since last 20 years in Oil India Ltd but they have not filed any documentary evidence which may prove that any appointment letter, pay slip or payment on account of pay & allowances have been made by opposite party. Further it has been mentioned in the written argument that applicants have never been issued any show cause notice or any letter relating to disciplinary proceeding, warning or charge-sheet by non-applicant. It has been further argued that they are in the employment of the contractor & workmen have failed to prove that they are the employee of the Oil India Ltd, hence, question of employer-employee relationship between Oil India Ltd & the workmen does not arise. Reliance on the point of employer-employee relationship has been placed by learned representative of the opposite party on the case reported in 2014 LLR 1009 S.C., Balwant Rai Saluja & Anr. .... Appellants v/s Air India Limited and Others ..... Respondents, (2009) 13 Supreme Court Cases 374, International Airport Authority of India.....Appellant V/s International Air Cargo Workers' Union and Another..... Respondents & 2004 (2) LLN 68 S.C., Workmen of Nilgiri Co-operative Marketing Society, Ltd.....Appellant v/s State of Tamil Nadu....Respondent, with contention that these cases provide principles of employer-employee relationship. Two cases of Balwant Rai Saluja & International Airport Authority of India have been relied & referred by learned representative of the applicants also. Learned representative of opposite party has placed further reliance on the cases reported in 2001 (91) FLR 1172 (Gujrat High Court), Bhartiya Karamchari Sangh ...petitioner v/s Oil & natural Gas Corporation Ltd. & others....Respondents, 2002(I) LLJ 398 (Calcutta High Court), Damodar Valley Corporation.....petitioner v/s Damodar Valley Corporation Canteen Workers' Union and Others.....Respondents, 2006 LLR 245 Supreme Court, Employer in relation to the Management of Sudamdih Colliery of M/s. Bharat Coking Coal Ltd.....Appellant V/s Their Workmen represented by Rastriya Colliery Mazdoor Sangh.....Respondent, 2008 LLR 344 (Bombay High Court), Bhartiya Kamgar Sena.....Petitioner v/s Udhe India Ltd. and Another.....Respondents, 2010 LLR 69 (Jharkhand High Court), M/s Bharat Coking Coal Ltd.....Petitioner V/s Workmen, M/s Bharat Coking Coal Ltd. and Another.....Respondents & 2004 (2) LLN 68 S.C., Workmen of Nilgiri Co-operative Marketing Society, Ltd.....Appellant v/s State of Tamil Nadu....Respondent.

40. Issue No.1 consists of two issues i.e. whether applicants are working with the non-applicant establishment for last 20 years & the second issue is whether there is employer-employee relationship between the principal employer & the workmen. From the pleading of both the parties it is evident that in para 3 of statement of claim applicants have alleged that they are working with respondent Oil India Ltd. & discharging the duties from last about 20 years. This fact has been denied in para 3 of reply to statement of claim & has been alleged that the 20 members of individuals listed in the schedule of reference were working for different periods under the supervision & control of different contractors but that too not for last 15 to 20 years & the relevant particulars about their nature of job, date of joining & place of working shall be placed before Hon'ble Tribunal. Thus, it shall appear that there is denial of opposite party that applicants are working with respondents for about last 20 years & burden of proof is with the applicants to prove the same. It has been alleged by opposite party in para 3 of reply to statement of claim that they will submit the particulars relating to alleged 20 workmen about nature of their job, date of joining & place of working before Hon'ble Tribunal but no such information has been filed by opposite party. In para 4 of the claim applicants have admitted that they have been artificially appointed through contractor but they are working under supervision and control of Oil India Ltd.

41. Date of joining of each of the applicant has been shown against their name in the schedule of the reference in which the earliest employment relates to Sh. Khangar Singh, chowkidar which is 17.7.85 & the latest employment has been shown to be 18.2.92 relating to Sh. Kushum Lal, Chowkidar. Date of joining of Sh. Sunil & Smt. Geeta w/o Late Sh. Kanhaiya Lal has not been given in the schedule. Sh. Sunil in his cross examination has alleged that his date of



joining is 15.4.97 & Smt. Geeta has alleged that her date of joining is 20.8.96. Each workman shown in the schedule has supported his date of joining in his affidavit in evidence & there appears no cross examination on the date of joining of the workman. All the applicants have admitted in their cross examination that they don't have any appointment letter issued by Oil India Ltd in relation to their date of joining as deposed in their affidavit & shown in schedule attached to the reference dated 9.12.2004 sent by Ministry for adjudication. The date of joining shown against each workman in the schedule has not been disputed by opposite party during cross examination except that workman of the schedule have not been issued any appointment letter by Oil India Ltd. Thus, looking into the earliest date of joining of workman Sh. Khangar Singh on 17.7.85 & latest date of joining by Sh. Kushum Lal on 18.2.92 & taking into account the presentation of petition by workman on 12.1.2005 it can be said that applicants are working for period approximately ranging between 13 years to 19 years on the date of petition & Sh. Sunil & Smt. Geeta are working for approximately 7 & 8 years respectively.

42. As far as the question of uninterrupted continuity of the service of workmen from the date of joining till the date of petition on 12.1.2005 is concerned no documentary evidence like attendance register, pay register etc has been filed by workmen or opposite party for entire period from date of joining till the date of claim in tribunal to come to unquestionable conclusion that workmen have been continuously working from the date of their joining till the date of the petition. From cross examination of each of the workmen there is nothing to conclude that workmen by their oral or documentary evidence have proved that they are working continuously from the date of joining till the date of petition.

43. Statement of Sh. Narayan Kalla, Deputy Manager witness for opposite party is relevant about the length of service of the workmen who has alleged in his cross examination on page 4 that date of joining in relation to 20 workmen of schedule 1 of reference is correct. He has further alleged that when he was posted in 1989 in Jodhpur at that time except 4-5 workmen out of 20 indicated in the schedule were working in Jodhpur. He has further alleged that in 1989 six persons among 20 namely Devaram, Padam Singh, Daulat Singh, Sambhunath, Man Singh & Loon Singh were working at Jaisalmer as Sh. Narayan Kalla got appointment in 1989, hence, he is not able to depose about facts of appointment & working of the applicants prior to the period 1989 but he has testified the date of joining of the workmen indicated in the schedule. On the basis of above discussion I am of the view that applicants have succeeded in proving that they are working w.e.f. their shown date of joining indicated in schedule attached to the reference which is ranging between approximately 13 years to 19 years & 7 years & 8 years respectively in case of Shri Sunil & Smt. Gita Devi.

44. Now, it is important to discuss the later part of issue No.1 whether there is existence of employer & employee relationship between the Oil India Ltd & 20 workmen mentioned in schedule attached to the reference. It has been argued by learned representative of the applicants that there exists employer-employee relationship between Oil India Ltd & 20 workmen of the schedule & contention of the opposite party that workmen are the employees of the contractor is baseless & workmen are working under control & supervision of officers & employees of the Oil India Ltd but artificially employed through the contractor & such contention has been raised only with a view to deprive the workmen of their legitimate statutory rights. Countering the above argument it has been argued by learned representative of the opposite party that applicants have never been appointed by Oil India Ltd & they are the employee of the contractor & have been working through different contractors on different point of time.

45. In (2011) 1 Supreme Court Cases 635, General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon....Appellant V/s Bharat Lal and Another .....Respondents, on the point of employer-employee relationship it has been held by Hon'ble Supreme Court in para 10 of the judgement as under :-

"10. It is now well settled that if the industrial adjudicator finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. Two of the well-recognised tests to find out whether the contract labourers are the direct employees of the principal employer are (i) whether the principal employer pays the salary instead of the contractor; and (ii) whether the principal employer controls and supervises the work of the employee. In this case, the Industrial Court answered both questions in the affirmative and as a consequence held that the first respondent is a direct employee of the appellant."

46. In (2014) 9 Supreme Court Cases 407 (F.B.), Balwant Rai Saluja ..... Appellants v/s Air India Limited and Others .....Respondents, on the point of employer-employee relationship, to ascertain as to whether workers of the contractor can be treated as the employee of the company referring to the cases reported in (2009) 13 Supreme Court Cases 374, International Airport Authority of India.....Appellant V/s International Air Cargo Workers' Union and Another..... Respondents & (2011) 1 Supreme Court Cases 635, General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon....Appellant V/s Bharat Lal and Another .....Respondents, it has been held by Hon'ble Supreme Court in para 65 of the judgement as under :-

“65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia :

- (i) Who appoints the workers;
- (ii) Who pays the salary/remuneration;
- (iii) Who has the authority to dismiss;
- (iv) Who can take disciplinary action;
- (v) Whether there is continuity of service; and
- (vi) Extent of control and supervision i.e. whether there exists complete control and supervision.

As regards extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case, International Airport Authority of India case and Nalco case.”

47. In 2004 (2) LLN 68 S.C., Workmen of Nilgiri Co-operative Marketing Society, Ltd.....Appellant v/s State of Tamil Nadu....Respondent, in para 37 of the judgement it has been held by Hon’ble Supreme Court as under :-

“37. The control test and the organization test, therefore, are not the only factors which can be said to decisive. With a view of elicit the answer, the Court is required to consider several factors which would have a bearing on the result :-

- (a) Who is appointing authority;
- (b) Who is the pay master;
- (c) Who can dismiss;
- (d) How long alternative service lasts;
- (e) The extent of control and supervision;
- (f) The nature of the job, e.g., whether, it is professional or skilled work;
- (g) Nature of establishment;
- (h) The right to reject.

48. 2014 (143) FLR 666 (Jharkhand High Court) D.B., Workmen, United Coal Worker’s Union.....Appellant v/s Employers, Management of Kuju Area of M/s. C.C.Ltd.....Respondents, referred by learned counsel for the applicant on the point of employer-employee relationship it has been held in para 16 of the judgement by Hon’ble High Court as under :-

“In view of the settle proposition of law it appears that the industrial adjudicator can grant the relief sought if it finds that contract between the principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefit to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short, who has direction and control over the employee. But where there is no notification under section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was a sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularize the services of the contract labour does not arise.”

49. To appreciate the point of relationship of employer-employee between Oil India Ltd & the alleged workmen it is necessary to analyse the evidences led by both the side on this point. Sh. Sanga Ram one of the petitioner of schedule attached to reference has alleged in his cross examination that he is not having any appointment letter regarding his appointment w.e.f. 1.8.91 in Oil India Ltd & has alleged that he was orally engaged. He has further alleged that neither there was any advertisement issued by the Oil India Ltd for the post of chowkidar nor any appointment letter was issued to him by Oil India Ltd. In cross examination Sh. Sanga Ram has supported paper No. W-164 to W-198 as his attendance register & alleged that signatures in the attendance register are related to him. Examination of attendance sheet of Sh. Sanga Ram from w-164 to w-198 reveals name of Sh. Sangaram, Gordhan Ram Danga, Chimna Ram & Rameshwar Dave in attendance sheet w-164 & w-165. Out of these four names only names of Sh. Sanga Ram & Gordhan is available in schedule A of the reference. Name of rest of the two persons are not available in the schedule. Attendance sheet for the month of August, 1998(Ex-w-166) is carrying heading as “Duty Roaster in respect of Work Contract Labour for the Month of August, 1998 & Onwards” & on this sheet of attendance for the month of August, 1998 telephone number of the contractor has been mentioned. Telephone number has been indicated as “Contractor Phone : 742536.” Some of the sheets relating to attendance has been printed with “Oil India Ltd, Rajasthan Project, Jodhpur”. Some of the stationary used for attendance sheet are not carrying any heading. Sh. Sanga Ram alongwith his

affidavit in evidence has filed Ex-158 which is in relation to allocation of work to seven workmen prepared by Superintending, Geophysicist which has been addressed to Senior Manager (A & IR). Ex-w-159 is relating to replacement of Chowkidars which indicates that duties of three chowkidars has been replaced from one place to another. Ex-w-160 to Ex-w-163 are request for leave on plain papers wherein request has been made for granting leave for different periods ranging from one day to six days on different applications, Ex-w-164 to Ex-w-198 are attendance sheets & Ex-w-199 to Ex-w-205 are correspondence in the department of Oil India Ltd relating to approval of overtime on different dates for different periods.

50. He has further alleged in his cross examination that his attendance was held in monthly register which he has filed along with his affidavit which are Ex-w-164 to Ex-w-198. Witness has admitted that it is correct that he was neither issued with copies of Ex-w-164 to Ex-w-198 nor Ex-w-158 to Ex-w-163 or Ex-w-199 to Ex-w-205. The witness has further admitted that leave applications are only relating to the period after dispute came in existence which are from April, 2004 to May, 2009. The witness has also admitted that he was not given any order in writing by officers of Oil India Ltd for doing any work but he has alleged on his own that he was given instructions orally. He has admitted that it is correct that deductions were made on account of ESI & provident Fund. He has also admitted that his payment was made by contractor but there were different contractors on different occasions. He has also admitted that it is correct that deposits relating to PF & ESI was done by contractor. Subsequently he has said that he does not remember that deductions & deposits on account of PF & ESI were made by contractor or not. About nature of work, the witness has alleged that it is correct that Oil India Ltd performs the work of digging wells of oil & gas. Further, he has alleged that it can not be said that nature of this work is temporary & again he has said that how can he say that this work is temporary or not. Sh. Sanga Ram has further alleged that 20 persons had made application before the Conciliation Officer & there was an agreement dated 4.5.98 entered during conciliation proceeding & the alleged conciliation was only regarding pay & it was not related to regularisation. He has further alleged that it is not correct that the contractor was supervising the work of alleged 20 applicants. He has further alleged that officers of the Oil India Ltd were taking the work by giving directions.

51. All the 20 workmen have filed their affidavit in evidence in support of their respective cases & all of them have similar contention about their appointment & demand for their regularisation. Before I proceed to discuss the evidence & related judicial pronouncements filed by both the side I find it proper to mention the evidences of some more witnesses for better appreciation of the facts & circumstances of the case. Smt. Gita Devi is one of the workman who according to written & oral argument of the learned representative of the applicant has been engaged by Oil India Ltd on compassionate ground. During argument reference of the case of Smt. Gita Devi has been specially made with a view to offer an established fact of employer-employee relationship between Oil India Ltd & the contesting workmen of this case. It is evident from perusal of record that Late Sh. Kanhaiya Lal husband of Smt. Gita Devi was employed by contractor as contract labour like other applicant workmen with Oil India Ltd in June, 1987 & died in accident on 13.4.96. As per notification dated 14.2.96 of Oil India Ltd 20 vacancies were to be filled up from helpers category from the WCLs working under the existing Labour Service Contract of the project according to conciliation agreement dated 20.12.95. Late Sh. Kanhaiya Lal was also one of the candidate who had applied against 20 vacancies & he was interviewed along with others candidates on 28.3.96 but died on 13.4.96 in accident. An application dated 18.4.96 for appointment on compassionate ground was moved by Smt. Gita Devi w/o Late Sh. Kanhaiya Lal which was addressed & received in the office of General Manager, Oil India Ltd, Jodhpur, Rajasthan on 19.4.96. In above fact & circumstances relating to Smt. Gita Devi this is important & pertinent question whether Smt. Gita Devi after death of her husband Late Sh. Kanhaiya Lal has been engaged by Oil India Ltd on compassionate ground ? Smt. Gita Devi in her affidavit in evidence has alleged that since 20.8.96 she is working on the post of peon under employment of Oil India Ltd & she has been issued with identity card by Oil India Ltd. She has further alleged that she was appointed by Oil India Ltd on compassionate ground but during cross examination on page 1 she has alleged that she was given appointment letter by Oil India Ltd but she has not filed the appointment letter on record of the file. On the same page later she has alleged that she was not issued with any appointment letter. She has also admitted that she is not aware that her husband was given any appointment on the basis of interview or not. She has specifically admitted that on the basis of her application for appointment on compassionate ground no appointment letter has been issued by Oil India Ltd in her favour. She has alleged that she is not aware of the signature of contractor on her identity card (Ex-435) marked between Alphabet 'A' & 'B'. Detail of her attendance sheets Ex-w-436 to Ex-w-442 has been filed by her along with affidavit in evidence & she has admitted about attendance sheets that they have not been issued to her by Oil India Ltd by any means postal or otherwise & original record of attendance sheets are not available with her. Ex-w-443 to Ex-w-445 are three leave applications relating to period March, 2002 to September, 2006 wherein request for casual leave & earned leave have been made but during cross examination she has admitted that order relating to granting of leave have not been issued by Oil India Ltd in relation to leave applications. Regarding deduction of provident fund she has alleged that she is not aware that deduction towards provident fund is made by contractor or not.

52. Records of payment filed by non-applicant from Ex-M-14 to Ex-M-67 indicates that payments for the month of June 2005 to December 2005 have been made to Smt. Gita Devi by Ganesh Security Services. These payment sheets

start from Ex-M-14 to Ex-M-71 & relate to other workmen also along with Smt. Gita Devi. These payment sheets also indicate that deduction towards ESI & PF has been made by contractor from all the workmen. Each of the payment sheet has been endorsed by OIL representative confirming that the payments shown in the payment sheet have been made to the workmen. Detail of overtime payment register in form of photocopy have been filed on record by management from Ex-M-85 to Ex-M-93, which is document of Ganesh Security Services. Ex-M-94 to Ex-M-98 is the document in form of photocopy of Ganesh Security Services from May 2005 to January 2006 regarding advance payment made to the applicant workman. Ex-M-98-A & Ex-M-98-B are challan regarding deposit of PF by Ganesh Security Services on 18.9.2005 & 21.2.2006. Ex-M-70 to Ex-M-77 are muster roll of M/s S.S.T. S.S. Ltd., Jodhpur for the period April 2004 to December 2004, January 2005 & February 2005. Above mentioned records reveal that workmen are in employment of contractor whose salaries have been paid by contractor & deduction towards PF & ESI also have been made & deposited by contractor.

53. Another applicant and witness for petitioners Sh. Kusum Lal has alleged in cross examination that neither he was given any appointment letter by OIL for working on the post of chowkidar since 18.2.92 nor there was any advertisement for the post of chowkidar. He has further alleged that he makes signature in the attendance register kept in office & he has filed the copy of attendance register. He has alleged that documents Ex- 281 to Ex-307 are documents related to his attendance which were in his possession & he has filed them along with his affidavit in evidence. He has further alleged that there is no record on the file to indicate that photocopy of the documents relating to attendance filed by him were given to him by opposite party. He has alleged regarding sanction of leave that he was submitting his leave application to the clerk in office but he has not filed any leave sanction order issued by opposite party. He has admitted that Ex-253 to Ex-261 ( employment card) are the documents of contractor & he is not having original copy of Ex-262 which is a certificate dated 28.7.99 issued by Sh. D.K. Dutta, DGM (RP), Oil India Ltd, (Rajasthan Project) to the effect that Sh. Kusum Lal has worked with Sh. D.K. Dutta from July, 97 to July, 99. About payment of wages the witness has alleged that he was paid by contractor & contractor was paid by Oil India Ltd. He has also alleged that it is correct that payments were made on the basis of attendance.

54. It is evident from perusal of 'employment card' filed by applicant Sh. Kusum Lal that Ex-w-253 to Ex-w-261 are employment cards signed & issued to applicant by contractor M/s Sarowar Shramik Theka Sahkari Samiti Ltd to work in the establishment of Oil India Ltd, Jodhpur wherein principal employer has been shown as G.M., Oil India Ltd, Jodhpur, for various period from Jan, 98 to 2010 on 12 monthly basis. In the above mentioned period between Jan, 98 to Dec, 2010 beside M/s Sarowar Shramik Theka Sahkari Samiti Ltd other contractors through whom the applicant has been engaged are M/s Zen & Zorba, Jodhpur, M/s Ganesh Security Services, Jodhpur & M/s Rathi Travels, Jodhpur. W-263 is the monthly wage slip of M/s Ganesh Security Services, Jodhpur for the month of July 2009 & January 2008 & w-264 is the monthly wage slip for the month of February, 2010 filed by applicant. W-265 is an account payee cheque of Corporation Bank, Jodhpur for a sum of Rs. 23,742/- in favour of applicant Sh. Kusum Lal.

55. Like evidences of Sh. Sanga Ram, Smt. Gita Devi & Sh. Kusum Lal in favour of themselves as well as applicants as quoted above all the applicants have been produced in evidence & cross examined by opposite party. Their evidences before the tribunal are similar like that of witnesses Sh. Sanga Ram, Smt. Gita Devi & Sh. Kusum Lal, hence, evidences rendered by each individual is not mentioned here. Evidences of any individual applicant/witness may be taken up while discussing any related issue wherever necessary. Sh. Narayan Kalla, Deputy Manager is the only witness of opposite party who has been produced in oral evidence. Major portion of his evidence has been quoted by learned representative of the applicants in written argument hence, it does not appear necessary to make repetition & evidences quoted in written argument or otherwise available on record will be taken at suitable places during discussion as required.

56. Learned representative of the applicant has vehemently argued that contractor is a mere camouflage which has been strongly opposed by learned representative of the opposite party, hence, it is necessary to discover the correct position of appointment, payment of salary & supervision & control etc. As far as the question as to who appointed the workmen as shown in schedule A is concerned each of the applicant in his affidavit has stated that he is working in the employment of Oil India Ltd. since the date indicated in schedule A of reference & has further alleged that he is working under the direction & control of Officers & employees of Oil India Ltd but each of the applicant in cross examination has admitted that no appointment letter was issued in their favour & no advertisement was issued for the alleged work which is being performed by applicants. Sh. Sangaram has admitted that he was not issued any appointment letter. Sh. Gordhan Ram Danga has also admitted that Oil India Ltd had neither issued any appointment letter nor advertisement for the post of Chowkidar. Similar statement have been made by Kusum Lal & Daulat Singh in their cross examinations about appointment letter & advertisement for the recruitment. Sh. Sunil Rawat has also admitted that there was no advertisement against his appointment. He has further alleged that his father was a contractual employee & he has been kept on job after the death of his father but he has not been issued with any appointment letter. He has also admitted that it is true that he works as contract employee. Smt. Geeta Devi w/o Late Sh. Kanhaiya Lal has been said to be an employee appointed by Oil India Ltd on compassionate ground after death of her husband late Sh. Kanhaiya Lal but there is no such appointment letter issued in her favour. She has admitted in her

cross examination that no appointment letter was issued to her by Oil India Ltd. She has also admitted that no appointment letter was issued to her husband also. She has said that she had applied for appointment on compassionate ground but neither any call letter nor appointment letter was issued to her by Oil India Ltd. Sh. Govind alleged in cross examination that he was issued with appointment letter but has not filed it on the record. It is pertinent to mention that it is not true that he was issued with an appointment letter because he has admitted that he is not in possession of any order or direction issued by Oil India Ltd in his favour to work in Oil India Ltd. Sh. Ramswaroop has said that he was not issued with any appointment letter but advertisement for recruitment was issued by Oil India Ltd but he has not filed the copy of advertisement. Sh. Khangara Ram has admitted that he was not issued with any appointment letter & he has further admitted that he does not know the contractor but he was receiving the payment through the contractor only & he is working through contractor till the date of his deposition during cross examination before the court. Sh. Hari Singh Bhati in cross examination has admitted that no appointment letter was issued to him by Oil India Ltd & there was no advertisement for telephone operator by Oil India Ltd. He has further alleged that he was only called for interview. He has also admitted that no written call letter for interview in writing was issued to him & he was orally called for interview. It is improbable to believe & accept such possibility of oral interview call by a Government of India Enterprise like Oil India Ltd. Rest of the applicant/witnesses have given similar statement as those persons whose evidence has been mentioned above.

57. It shall appear from statement of all the witnesses as mentioned above that applicants have failed to prove that they have been appointed by the Oil India Ltd. Much reliance has been placed by learned representative of the applicant on the statement of cross examination of non-applicant's witness Sh. Narayan Kalla, Deputy Manager. Employment cards issued by different contractors in favour of applicants for different financial years also indicate that applicants are not in the direct employment of Oil India Ltd. Identity cards issued in favour of applicants are also indicating this facts that they have been issued by Oil India Ltd on the attestation of contractor concerned for the respective time. A close scrutiny of the cross examination of Sh. Narayan Kalla is of no help to the applicants to conclude that applicants have been appointed by Oil India Ltd. Schedule attached to the reference relating to applicants is showing their date of joining & the same has been admitted by Sh. Narayan Kalla on page 4 of cross examination as date of joining of the respective applicants but no documentary evidence has been filed on record from the side of applicants to support the contention of the alleged date of joining in the services of OIL. Sh. Narayan Kalla also has never admitted that joining dates are relevant about their joining in service of Oil India Ltd. Applicants have failed to discharge the burden of proof that they are employee of Oil India Ltd & have been appointed by OIL whereas many of the applicant have admitted to be in the service of contractor till the date of their deposition during cross examination. On the basis of above discussion I am of the view that applicants have failed to prove that they have been appointed by Oil India Ltd from date of joining as shown in Schedule attached to the reference dated 9.12.2004.

58. As far as the question of the fact relating to payment of salary & deduction of PF & ESI is concerned as to who pays the salary to the applicants & makes deduction in their favour towards PF & ESI, in this context documentary evidence on record w-380 to w-384 indicate that payments have been made by contractor & deductions for ESI & PF have been made by contractor only. It is further important to note that payment for the month of May-June, 2011 have been made through the cheque by Oil India Ltd on the basis of result of meeting held between management of Oil India Ltd & Regional Labour Commissioner(Central), Ajmer. This fact has been revealed by letter dated 8.7.2011 addressed to General Secretary, Raj. Oil Casual Employees Union, Jodhpur by Chief Manager (Administration) wherein the General Secretary has been requested to inform the workers to collect their cheques for the month of May & June, 2011. Pointing out to these cheques it was argued by learned representative of the applicants that these cheques are proof of payment of salary made by principal employer directly to the applicant workmen. Barring the payments by cheque for above mentioned reason for alleged period all previous & later payments have been made through contractor & there is nothing to conclude that payments to the alleged applicants have been made directly by OIL. On page 18 Sh. Narayan Kalla has alleged about this fact as to why payment was made by cheque which was limited for three month's pay only. He has alleged that these 20 workmen were paid by cheque for three months only in the year 2011 because the contractor of the labourers had not made payment for that period & due to non-payment by contractor payment was made by Oil India Ltd for that period. This was result of discussion on 1.7.2011. Applicant witnesses Sh. Gordhan Ram Danga has admitted in cross examination at page 2 that wages were paid by the contractor only & for making payment one person from the company was also coming with contractor. He has further admitted that deduction of ESI & PF was also done by contractor. Witness Sh. Prabhu Singh also has alleged on page 1 of cross examination that contractor was making payment of wages & the depositing of PF etc was also done by contractor only. Witness Sh. Man Singh has also admitted on page 2 of cross examination that PF application relating to year 2010 bears the signature of former employer Ganesh Security Services. Sh. Kusum Lal has admitted that pay slip issued has been issued to him by contractor which is document EX-263 & 264. Witness Sh. Sanga Ram also has alleged in cross examination on page 2 that wages were paid to him by contractor & there have been different contractors for different period & it is true that deduction of PF & ESI was made in his favour. Sh. Hari Singh Bhati has alleged in his cross examination that payment of wages were made to him by the contractor. Like evidences of above mentioned witnesses

looking into evidence of all the witnesses shall reveal that whoever has been asked about payment of wages the answer has been that payments of wages have been made by contractor only. Documents filed by opposite party relating to deduction of PF, ESI & payment of wages mentioned in the list of documents also corroborate the fact that payments of wages have been made by contractor.

59. On the basis of above discussion it is clear that payments to the applicants are made by contractor only & not by Oil India Ltd.

60. To proceed further on the point of employer-employee relationship I find it proper & necessary to mention certain provisions of the agreement entered into by & between Oil India Ltd & the employer of the 20 workmen i.e. contractor. According to part III of the contract following category of workmen along with their work are required to be supplied by the contractor & the workmen under schedule 'A' are admittedly engaged on the nature of work shown in part III of the agreement. Part III of the agreement in brief is as mentioned below :-

### **Part III**

#### **SCOPE OF SERVICES AND MINIMUM JOB KNOWLEDGE/QUALIFICATION/EXPERIENCE SKILLED CATEGORY**

- a) To operate Company's EPABX System.
- b) Attending ongoing & incoming calls.
- c) Regular Cleaning/dusting of the EPABX system & accessories.
- d) Cleaning of the Batteries, its terminals & topping up with distilled water as and when required.
- e) Any other job related to the above from time to time.
- f) Should be familiar with Hindi & English conversion with two year experience.

#### **Unskilled Category**

- a) To collect & deliver incoming and outgoing mail and radio messages.
- b) To prepare & serve Tea/Coffee/eatables & serve water to the working group/visitors etc as and when required.
- c) Handling/filing of official papers.
- d) Locking & opening the office premises. Taking care of company property whenever required as and when advised.
- e) To assist overseer/Civil engineer supervisor for misc. jobs including planting & watering of trees & look after plantation.
- f) To collect/wash/pack samples.
- g) To do stacking/storing of materials.
- h) To do cleaning /handling of Lab Equipments.
- i) Mixing of Mud/Cement etc.
- j) Handling of rock samples.
- k) Housekeeping of the Mud Logging Units.
- l) To work as helpers in company owned vehicles.
- m) To lift/lower tubewell pumps.
- n) Loading/unloading of material to/from vehicles.
- o) Issue material under supervision.
- p) To operate DG Sets Checking/filling of Oil/watering of engine & maintain register.
- q) To assist in filling/decanting water tanks.
- r) Keeping safety/security of Company properties.
- s) Maintaining of registers showing mileage of Company hired vehicles.
- t) All other misc. jobs as and when advised.

SERVICE PROVIDER	COMPANY
(signature illegible)	(signature illegible)
(For Sarowar S.T.S.S., Ltd.)	General Manager
	Oil India Limited
	Rajasthan Project, Jodhpur.

61. For the purpose of supervision & control by the contractor over efficient working of the workmen agreement provides in part I para 7 & 7.1 as under :-

“7.0 The Service Provider shall supply and maintain the regular trouble free and proper service everyday throughout the period as specified in the agreement and/or advised. The Service Provider shall be liable to pay to the Company the liquidated damages at the following rates.

Skilled Services	Rs.250/- per Shift per Service personnel
Unskilled Services	Rs.200/- per shift per service personnel

Providing that no liquidated damages will be levied for absence once in a calendar month under each category/type of service in respect of services at Jodhpur District and absence up to two days in a calendar month under each category/type of service in Jaisalmer District, and other operational area of Oil, if any. The Company reserves the right to reduce or waive the liquidated damage amount at its sole discretion.

7.1 The Service Provider shall provide competent service personnel in all categories/types of services in most efficient and workman like manner under his supervision. In case of failure in the part of Service Provider to tender the service at anytime, the Company reserves the right to obtain the services from any other agency at Service Provider's risk and cost. The difference of higher cost, if any, will be recoverable from the service provider's outstanding bills or his security deposit.”

62. Beside providing many other provisions in the agreement for control & supervision over workmen by contractor relating to efficient discharge of duty by workmen part IV (2) of the agreement also provides that service provider himself or his authorised representative will contact the ACM (A & IR) on daily basis which reads as under :-

“(2) The Service Provider or his authorised representative will meet ACM(A & IR) or his authorised representative daily for review of his performance & also to receive such instructions as may be required from time to time.”

63. Looking into above provisions provided in the agreement it is sufficiently clear that supervision & control of the workmen was purely in the hand of the contractor & it was responsibility of the contractor to ensure the efficient working of the workmen & such supervisor or authorised representative of the contractor or the contractor himself was under an obligation to contact ACM(A & IR) on daily basis to review the performance & secure the instructions for successful execution of the allocated work. Contractor was also responsible for any loss or damages to the company on account of non-performance or negligent performance of the duties assigned to the workmen. Here it is necessary to take note about statement of applicant witnesses in their cross-examination about supervision & control over their working. Sh. Hari Singh Bhati in cross-examination has admitted that it is correct to say that he was working under the control of contractor. About supervision & control over the working of the workmen Sh. Sukhbir Singh Yadav has alleged that direction for work was given to him by officers of the Corporation but he has further alleged that he has not filed any direction on record of the file. Similarly Sh. Govind has stated that he was receiving direction from Oil India Ltd for working but he has not filed any such direction in writing on record. Few of the witnesses like Sh. Adu Singh, Sh. Man Singh have alleged that they have not worked under the control of contractor which is nothing but a wrong statement because they have admitted that payment of wages have been made by contractor to them & agreement provides for damages recoverable from contractor for their non-performance, under-performance or negligent performance. Similarly perusal of statements of all the 20 witnesses indicate that some of them have deposed that they have worked under control & supervision of contractor, some of them have deposed that they have worked under direction of officers of the Oil India Ltd but have stated that they have not submitted such direction of the Oil India Ltd in writing on record. Some of the witnesses have not faced such question about supervision & control over their work. Major portion of the written arguments of the learned representative of the applicant carry the statements of witness for opposite party Sh. Narayan Kalla, Deputy Manager on the point of employer-employee relationship but those referred statements are not capable of even preparing a foundation to attribute employer-employee relationship between Oil India Ltd & alleged workmen. Sh. Narayan Kalla also in his cross-examination has alleged on page 15 that supervisor of the contractor was coming for supervision of the workmen of the contractor & he has alleged that it is wrong to say that work of coordination is carried out by the management & he has reiterated that the work of supervision was done by contractor's supervisor only. He has alleged that in the year 2011-12 the work of supervision

was done by Sh. Tiwari but he does not remember his full name. He has also alleged that a person nominated by contractor comes daily & explains & makes them understand the work to be carried out by them & he is compulsory required to come daily. He has also alleged that in the matter of supervision by supervisor of the contractor department of Oil India Ltd has no role to play. There are evidence of instances where officers of the Oil India Ltd have been active in allotment of overtime work to the workmen, replacing the workmen from one place to another etc for efficient & effective working of the workmen but such instances are not of such nature which can be attributed to be sufficient to say that there is complete control & supervision of Oil India Ltd to establish employer-employee relationship between Oil India Ltd & workmen employed through contractor. Reliance has been placed on leave applications of the applicants that they have been submitting their leave applications & getting the sanctions of the officers of Oil India Ltd but not a single leave sanction order has been filed in respect of any workman for a single day or for extended period of time. Witness Sh. Narayan Kalla regarding leave application has alleged that workmen submit leave applications to the witness & he gives those leave applications to the contractor & in this way he only forwards those applications & no one in Oil India Ltd has authority to sanction their leave. Issue of identity card by Oil India Ltd has also been pointed out as one of the point in favour of workmen on the point of employer-employee relationship which is a misplaced approach for deriving conclusion that issue of identity card is a point existing in favour of applicant because issue of identity card is part of agreement which is to be issued by the contractor. All the identity cards filed on record have been countersigned by respective contractors & thereafter have been signed by Oil India Ltd which is a necessary requirement in absence of which workmen cannot enter the premises where they are required to work. Identity card is an essential item from the security point of view also & it has to bear the seal & signature of some official of Oil India Ltd from the department of HR. Such seal & signature on identity card cannot be taken to be a proof of employment by Oil India Ltd.

64. Reliance has also been placed by learned representative of the applicant in relation to the transfer of the applicant from one place to another in favour of the fact that this creates a mode of employer-employee relationship. Such an argument is unsustainable because in the agreement itself there is provision for changing the place of work of the workmen within the establishment & provision has also been provided to transfer beyond the establishment on expenditure to be made and borne by the company, hence, I am of the view that transfer is part of the agreement & it is incapable of creating a step in furtherance of creation of employer-employee relationship.

65. The learned counsel for the applicant on the point of employer-employee relationship has also placed reliance on appointment of Smt. Gita Devi on compassionate ground by management of Oil India Ltd which has been denied by opposite party. The learned representative for applicant has made reference in written argument to the statement of Sh. Narayan Kalla on page 13 of his cross-examination that he has admitted about recruitment of Smt. Gita Devi on compassionate ground. Close examination of the alleged statement only indicates that she is one among other workers of Schedule 'A' & she is the workman of the contractor & she has not been appointed by Oil India Ltd & no appointment letter was issued in her favour by Oil India Ltd. This matter has been dealt in detail while noting the evidence of Smt. Gita Devi. Appreciation of the evidence of Sh. Narayan Kalla by learned representative of opposite party & his contention in the argument that she has been appointed by Oil India Ltd is completely devoid of merit. Smt. Gita Devi has herself admitted in cross-examination that no appointment letter was issued to her or her husband on the basis of notification dated 14.2.96 issued by Oil India Ltd (Rajasthan Project) Jodhpur. Accordingly, I am of the view that there is no evidence to establish employer-employee relationship between Oil India Ltd & workmen on the basis of alleged appointment on compassionate ground to Smt. Gita Devi.

66. Reference has also been made to the agreements entered into among Oil India Ltd, Contractor & workmen & has been argued by learned representative of the applicant that in some of the agreements contractor is not a signatory to the settlement or agreements & in some agreements contractor is party & agreement in which contractor is signatory no agreement has been arrived with him, hence, all the settlements are only between Oil India Ltd & the workmen, thus, these settlements are instances of employer-employee relationship. Countering the above argument it has been alleged by the learned representative of the opposite party that the agreements not signed by contractor are no way capable of establishing employer-employee relationship & nothing has been shown as to how agreements are capable of establishing such relationship. Here, it is important to mention that a settlement/agreement is only proof of facts for which it has been made & entered into by the parties to it, hence, no agreement/settlement between or among the parties can be treated to be a proof of the fact for which it has not been written or agreed upon. Accordingly, no agreement or settlement can create employer-employee relationship between applicant workmen & principal employer. Further, in view of the fact that the workmen continue to come through the contractor & carry out the work in the establishment of the Oil India Ltd under supervision & control of the supervisor of the contractor is itself sufficient to say that agreements/settlements are no way proof of existence of employer-employee relationship between workmen & principal employer. Argument of learned counsel for the applicants on this point is accordingly not sustainable.

67. All the witnesses of the applicant have admitted in their cross-examination that they have not been issued any notice by Oil India Ltd with a view to take disciplinary action against them. There is no evidence on record to show that any disciplinary action was ever taken against any workman by Oil India Ltd because there is no such authority



given to the management of OIL. In the agreement the only provision against an employee is to make complaint against him by management to the contractor & ask the contractor to remove & replace the workman & also compensate any loss sustained by Oil India Ltd on account of misdeed of the workman. As there is no authority with Oil India Ltd to take any disciplinary action hence, I am of the view that Oil India Ltd is not having any authority to dismiss any workman engaged by the contractor.

68. As far as the question of continuity of the service of the workmen is concerned it is admitted case of the applicant that they are continuously working with Oil India Ltd through contractor. Sh. Narayan Kalla has admitted on page 4 in cross-examination that since 1991 there have been change of 5-6 contractors although he cannot give the exact number but despite the change of contractors there has been no change in these 20 workmen. He has further alleged that management of Oil India Ltd gives the list of 20 workmen who are employed by contractor. Here it is pertinent to note that neither there is any documentary evidence on record that management of Oil India Ltd submits the list of 20 workmen to a contractor to supply only these 20 workmen to Oil India Ltd nor it is the case of parties in their pleading that regardless of the fact that who is contractor management submits the list of only these 20 persons to the contractor. Not a single such list of past or present has been filed from either side. Out of 20 workmen 19 workmen are unskilled & one workman is of skilled category. In light of statement of Sh. Narayan Kalla that he is seeing the workmen working continuously since his appointment in 1989, I am of the view that there is continuity of the service of the workmen through contractor.

69. As far as the question of nature of work of Oil India Ltd being temporary or permanent is concerned it has been alleged by learned representative of the applicant that the nature of the work is permanent. Countering the above argument it has been alleged by learned representative of the opposite party that work of opposite party is temporary in nature. It shall appear from the perusal of entire record & oral evidence adduced by both the side that the project on which opposite party is working is called Oil India Ltd (Rajasthan Project), Jodhpur. Applicant witnesses have admitted that the work of Oil India Ltd (Rajasthan Project), Jodhpur is digging of well to search the oil & gas & when they find a source of availability of oil or gas then for the purpose of exploration further work is undertaken by exploration department who carry out the work of exploration of oil & gas. The work of Oil India Ltd (Rajasthan Project), Jodhpur is thus digging of well on the probability of existence of oil & gas. Sh. Narayan Kalla has stated on page 2 of cross-examination that the work of digging of well for search of oil is presently carried out in Jaisalmer, Bikaner & Ganganagar. For the purpose of exploration he has stated that there are two rigs of Oil India Ltd & both of them are situated in Jaisalmer. He has further alleged on page 6 that all the work of drilling at Jaisalmer are being carried out on contract basis & only monitoring is done by Oil India Ltd & Oil India Ltd is having lease for carrying out the above activity. Sh. Narayan Kalla has stated in para 6 of affidavit that the work of Rajasthan Project is of temporary nature. There is no significant cross-examination on this statement to draw an otherwise conclusion. It is evident from the above statement that the work of the Rajasthan Project of Oil India Ltd is limited to digging of well in anticipation of availability of oil or gas which is purely of temporary nature wherein management of the Oil India Ltd is mainly associated with monitoring & ensuring the work carried out by labourers through contractors are done according to the manner & specifications as provided in the contract. Accordingly, I am of the view that the nature of work of opposite party is temporary.

70. It is important to mention that in para 12 of statement of claim it has been alleged & has been argued by learned representative of the applicants that the contractor is merely a camouflage smack & the contract is not genuine & the court is empowered to look into the genuineness of the contract. Reference has also been made to the case of Steel Authority of India Ltd with reference to section 10 of CLRA Act & notification of the Govt. of India dated 9.12.76 in para 6 of the statement of claim in relation to regularisation of the workmen. Countering the above argument it has been argued by learned representative of the opposite party that regularisation u/s 10 of CLRA by principal employer is not permissible & it has been further argued that the contract between the principal employer & the contractor is genuine & not a mere camouflage smack. Reliance has been placed by learned representative of the opposite party on the case reported in 2015 LLR 292 (Calcutta High Court), M.M.T.C Ltd....petitioner v/s The Learned Fourth Industrial Tribunal....Respondent.

71. In 2015 LLR 292 (Calcutta High Court), M.M.T.C Ltd....petitioner v/s The Learned Fourth Industrial Tribunal....Respondent, in the order of reference for adjudication two issues were raised viz., whether the action of the management of the petitioner in not regularizing the 17 workmen was just and to what other relief the workmen were entitled to.

72. The case of the workman was that petitioner company was adopting unfair labour practice by not regularising the service of its casual workmen or daily wagers who had been working there uninterruptedly against regular vacancies. They were performing the job which were perennial nature. It was further submitted that after the abolition of contract labour system a direct relationship of employer & employee had been created between the workman & the petitioner & a right has been created in favour of workmen to be regularised as employees in the establishment in which they were working. As the petitioner company was neither registered as a principal employer nor was the

contractor a licensed one the contract system was a mere camouflage & if veil of the petitioner is lifted it emerges as the real employer of those workmen. The contention of the petitioner company was that workmen are not the employee of the petitioner company on regular pay roll of the company & as such the union was not eligible to represent them. It was also submitted that since the petitioner is a Government of India Enterprise no reference can be made by the State Government & tribunal has no jurisdiction to entertain or adjudicate upon the same. On the point of employer-employee relationship it was submitted that labourers did not have any right of regularisation because they were employed by an employer & there was no employer-employee relationship between the petitioner MMTC Ltd & the respondent labourers. After appreciation of evidence adduced on behalf of both the parties the learned judge, Industrial Tribunal on the basis of violation of provisions of CLRA Act 1970 & the factum of contract labour not being genuine passed an award dated 31.3.11 holding the employees under reference to be employee of petitioner company which was held to be principal employer & the employees having worked for more than 240 days in the last preceding year regularisation of the service was justified. Aggrieved by the order of the learned tribunal petitioner preferred writ petition before the Hon'ble High Court on the ground that CLRA Act, 1970 is totally inapplicable because the total number of workforce is less than 20 & the finding of the tribunal is not correct that factum of casual labour was not genuine. It was also submitted that there was clear evidence of employment of contract labourers by their employer Sh. Malik & the order of regularisation was passed without considering several factors as stated in writ petition. It was submitted by union the respondent No.3 that the workmen covered under the award had been continuously working for about two decade & discharging the same nature of job as are being performed by the regular employees rendering the action of the petitioner unfair labour practice. The contract labour system was also said to be a mere camouflage & draped in a paper agreement. The union further submitted that in exercise of power conferred by section 1(IV) of the CLRA Act notification dated 29.3.76 was issued making provisions of the act applicable to establishments where more than 10 or more workmen were employed on any date of the preceding 12 month from the date of the notification. It was denied that CLRA Act is not applicable & further alleged that establishment of the principal employer was not registered u/s 7 & contractor Sh. Malik was not licensed u/s 12 of CLRA Act, hence, writ petition be dismissed. Referring to various pronouncements of Hon'ble Supreme Court & various High Courts referred from both the side the award of the learned tribunal was set aside. It was held by Hon'ble High Court in para 42 to 44 of the judgement as under :-

“42. In support of his contention that in the absence of any direction for regularization per se is not permissible. Mr. Ghosh has relied on the case of Hari Nandan Prasad and Another v. Employer I/R II Management of FCI and Another, 2014 (2) LLN 564 (SC): 2014 (2) SCALE 399. In that case admittedly the appellant had worked for more than 240 days continuously preceding their termination. The tribunal in its Award, inter alia, held that the termination was illegal and the appellant No.1 was entitled to be regularized in service. The Supreme Court specifically held that if there were no vacant posts such a direction for regularization would be impermissible. Giving direction to regularize a person only on the basis of the number of years put in by such a worker may amount to a backdoor entry into the service which is an anathema of Article 14 of the Constitution.

43. Thus, the finding of the tribunal that since the concerned employees in the present case had worked for 240 days in the preceding years their regularization is justified is an unjust observation in view of the settled position of law.

44. Thus the totality of the facts and circumstances and the evidence adduced, leave no manner of doubt that the Tribunal had passed the impugned Award clearly against the weight of evidence as well as the settled principle of law. It has not appreciated the evidence properly and ignored a major chunk of evidence and applied wrong legal tests to arrive at wrong decision. I find no reason to sustain this award.”

73. As far as the application of the finding of Hon'ble Supreme Court in the case of Steel Authority of India Ltd (SAIL) (2001 SCC (L&S) 1121 in the present case is concerned, the Hon'ble Constitution Bench in the case of SAIL was primarily concerned with the meaning of expression 'appropriate government' in Section 2(1)(a) of the CLRA Act & in the Section 2(a) of the I.D. Act, 1947. The other issue was about possibility of automatic absorption of contract labour by principal employer as a consequence of an abolition notification issued under section 10(1) of CLRA Act. Hon'ble Apex Court overruled the judgement in Air India Statutory Corporation v/s United Labour Union (1997 SCC (L&S) 1344) & held that neither section 10 of CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issue of notification under the said section, prohibiting contract labour & consequently the principal employer is not required to absorb the contract labour working in the establishment concerned. Based on the view of Hon'ble Constitution Bench as mentioned above in SAIL case it is clear & unambiguous that argument of the learned counsel for the applicant is unsustainable that provision of section 10 of CLRA Act or notification dated 9.12.76 effective from 1.3.1977 provide any relief to the applicant for the purpose of absorption/regularisation in the present case. Further, I am of the view that the law laid by Hon'ble Calcutta High Court in 2015 LLR 292 (Calcutta High Court), M.M.T.C Ltd....petitioner v/s The Learned Fourth Industrial Tribunal....Respondent, is applicable in fact & circumstances of the present case.

74. Reliance has been placed by learned representative of both the parties on the concept of employer-employee relationship provided by Hon'ble Supreme Court in (2014) 9 Supreme Court Cases 407 (F.B.), *Balwant Rai Saluja v. Appellants v/s Air India Limited and Others* ..... Respondents & (2009) 13 Supreme Court Cases 374, *International Airport Authority of India v. Appellant V/s International Air Cargo Workers' Union and Another* ..... Respondents, wherein essential conditions have been provided to come to the conclusion whether relationship of employer-employee exists between the parties such as who appoints the worker, who pays the salary & remunerations, who has authority to dismiss, who can take disciplinary action, whether there is continuity of service & existence of complete control & supervision.

75. In Civil Appeal Nos. 10264 – 10266 of 2013, *reported in* (2014) 9 Supreme Court Cases 407 (F.B.), *Balwant Rai Saluja v. Appellants v/s Air India Limited and Others* ..... Respondents, in relation to industrial dispute referred by Central Government the question referred to Industrial Tribunal for adjudication was whether workman as employed by respondent No. 3 ( *Chefair Flight Catering*) to provide canteen services at the establishment of respondent No.1 ( *Air India Ltd.*) could be treated as deemed employee of the said respondent No.1. Vide order dated 5.5.2004 it was held by CGIT that workmen were employees of respondent No.1 *Air India* & therefore, their claim was justified. It was further held that during the pendency of the dispute termination of the services of the workmen was illegal. Award of the tribunal was set aside by Hon'ble Single Judge & held that the said workmen would not be entitled to be treated as or deemed to be the employees of the *Air India*. Appeal against the order of Hon'ble Single Judge was dismissed by Hon'ble Division Bench confirming the order of Hon'ble Single Judge who observed that the responsibility to run the canteen was absolutely with the HCI & the *Air India* & the HCI shared an entirely contractual relationship. Therefore, the claim of the appellants to be treated as employees of the *Air India* & to be regularised was rejected by the learned single judge. In appeal before the Hon'ble Supreme Court against the order of Hon'ble Division Bench, there was difference of opinion between the Hon'ble Judges of Supreme Court, hence, the appeal were placed before the Hon'ble Full Bench of Supreme Court by referral order dated 13.11.2013. The question before the Hon'ble Full Bench was whether the workman engaged in statutory canteens through a contractor could be treated as employee of the principle establishment. It is pertinent to note that before the referral order Hon'ble Judges differed in their opinion regarding the liability of principle employer running statutory canteen & further regarding the status of the workmen engaged thereof. The Hon'ble judges differed on the aspect of supervision & control which were exercised by *Air India Ltd*, respondent No.1 & the *Hotel Corporation of India Ltd* respondent No.2 over the said workmen employed in these canteens. Referring to its various pronouncements it was held by Hon'ble Full Bench of Supreme Court as under :-

“85. Therefore, in our considered view and in light of the above, the appellants-workmen could not be said to be under the effective and absolute control of *Air India*. The *Air India* merely has control of supervision over the working of the given statutory canteen. Issues regarding appointment of the said workmen, their dismissal, payment of their salaries, etc. are within the control of the HCI. It cannot be then said that the appellants are the workmen of *Air India* and therefore are entitled to regularization of their services.

86. It would be pertinent to mention, at this stage, that there is no parity in the nature of work, mode of appointment, experience, qualifications, etc., between the regular employees of the *Air India* and the workers of the given canteen. Therefore, the appellants-workmen cannot be placed at the same footing as the *Air India*'s regular employees, and thereby claim the same benefits as bestowed upon the latter. It would also be gainsaid to note the fact that the appellants-herein made no claim or prayer against either of the other respondents, that is, the HCI or the *Chefair*.

87. In terms of the above, the reference is answered as follows :

The workers engaged by a contractor to work in the statutory canteen of a factory would be the workers of the said factory, but only for the purposes of the Act, 1948, and not for other purposes, and further for the said workers, to be called the employees of the factory for all purposes, they would need to satisfy the test of employer-employee relationship and it must be shown that the employer exercises absolute and effective control over the said workers.

88. In view of the above, while answering the referral order, we dismiss these appeals. No order as to costs.”

76. In the present case it has become very clear that contention of the applicants is wrong that contractor is a mere camouflage. They have failed to prove that there is any employer-employee relationship between *Oil India Ltd* & the workmen. They have also failed to prove that they are in the control & supervision of *Oil India Ltd* & they receive the payment of salary from *Oil India Ltd*. They are still in the receipt of pay & emoluments from the contractor & *Oil India Ltd* has no control of any nature disciplinary or otherwise over the workmen hence, *Oil India Ltd* cannot be said to be employer of the alleged workmen. Here, it is pertinent to take notice of the fact that till the settlement dated 4.5.98 there has not been any claim by the applicants that they are employee of the *Oil India Ltd*. Soon after failure of their demand dated 10.12.96 failure report dated 29.11.97 was sent to the Ministry of Labour, Govt. Of India. Immediately, thereafter they submitted another 26 point charter of demand cum strike notice dated 2.1.98 whereupon the settlement

dated 4.5.98 was entered. As a result of settlement they obtained everything out of it except absorption/regularisation which was to be given to them on the basis of vacancy & their eligibility & suitability. As vacancy did not arise since 1996 till the institution of claim which became the cause of present dispute. There appears no reason that how these circumstances create a situation in favour of workmen to claim that they are the employee of principal employer Oil India Ltd & contractor is a mere camouflage. The law laid down by Hon'ble Supreme Court is attracted in the fact & circumstances of the present case & does not create any favour to benefit the applicants.

77. In AIR 1978 Supreme Court 1410, Hussainbhai.....Petitioner v/s The Alath Factory Tezhilali Union and others.....Respondents, referred by learned representative of applicant, the petitioner before the Hon'ble Supreme Court was factory owner. Ropes were manufactured in the factory. Workmen were hired by contractor to make ropes within the factory premises. Dispute before the court was whether workmen hired by contractor were workmen of the contractor or the petitioner. it was observed by Hon'ble Supreme Court in para 5 of the judgement as under :-

“5. The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like, may be resorted to when labour legislation casts welfare obligations on the real employer based on Arts. 38, 39, 42, 43 and 43-A of the Constitution. The court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearances.”

78. In the abovementioned cases the Hon'ble Supreme Court considered the concept of employer-employee relationship from the point of view of economic realities to ascertain the actual employer. Economic control was given due weightage by the Hon'ble Supreme court while considering the question of employer-employee relationship between the petitioner and workmen hired of the contractor. It is important to mention that the case of hussainbhai did not deal with any statutory obligation & proceeded on the test of employer-employee relationship to ascertain the actual employer from the point of view of economic realities. Further, there was no existing settlement among the parties before the dispute was raised by the union.

79. In 2015 (144) FLR 1012 (Allahabad High Court), M/s. Indian Farmers Fertiliser Co-operative Ltd..... Petitioner v/s Presiding Officer, Labour Court & others.....Respondents, referred by learned representative of the applicant, services of respondent 3 Sh. Manoj Kumar Gupta, workman was terminated by petitioner M/s Indian Farmers Fertiliser Co-operative Ltd. Dispute referred for adjudication was “whether the termination of services of workman, Sri Manoj Kumar Gupta, ‘Data Entry Operator’ with effect from 3.6.1999, by the employer is justified and/or legal? If not, then to what relief and compensation, the workman is entitled and its effect.” The dispute raised by workman before the Conciliation officer was that workman Sh. Manoj Kumar Gupta was appointed on 15.6.93 on the post of casual typist & later on he had been designated as Data Entry Operator. It was further alleged by him that he was wrongly shown as workman engaged through contractor & he was discharging the duties which were permanent in nature & his services have wrongly been terminated w.e.f. 3.6.99. IFFCO, the petitioner denied Master-Servant relationship between petitioner & workman. The stand of the IFFCO was that workman was engaged by a contractor M/s H.S. Construction, respondent No. 4 licensed under the Contract Labour (Regulation & Abolition) Act, 1970, hence, no industrial dispute existed between them. The workman took the plea that he was working in the supervision & control of IFFCO & his job was of permanent nature. He has completed 240 days in each calendar year & his work was never supervised by contractor & the contractor was only an agent of IFFCO & was a camouflage. It was further alleged by workman that there was no control over his working by contractor, only salary was being paid through contractor whereas the attendance of the workman was noted by the authorities of the IFFCO. However, no appointment letter was given to the workman & by an oral termination his services were dispensed with, hence, the workman is entitled to reinstatement with full back wages from the date of termination. The Labour Court vide its award dated 24.9.2002 held that workman was not an employee of IFFCO but was an employee of contractor M/s H.S. Construction & he was not entitled to any relief. Award of the labour court was challenged which was set aside & matter was remanded back to the labour court for reconsideration after opportunity of hearing to the parties concerned. Labour court was further directed that while considering the matter afresh it shall take into consideration the reason assigned in the judgement dated 4.5.1999 of the Hon'ble High Court in writ petition No. 18684 of 1990 which was related to 88 IFFCO workmen. The subsequent award of the labour court after remand in favour of workman was passed on 20.6.2007 which was challenged in the writ petition before the Hon'ble High Court. The labour court in the subsequent award recorded the finding that the workman had worked for a period more than 240 days in a year & was continuously working in the establishment which was not disputed by employer IFFCO at all. Accordingly, award of

the labour court on the point of illegal termination of the service by the petitioner was upheld, however, it was held by Hon'ble High Court that it could not be found that the concerned workman was discharging the duties of Data Entry Operator, hence award of the labour court was modified to the extent that workman was entitled for reinstatement on the same position on which he was working prior to his disengagement on 3.6.99 & entitled for reinstatement & payment of current wages from the date of the judgement of Hon'ble High Court. Accordingly, award of the labour court about back wages was modified & with above modification award dated 20.6.2007 of the labour court was affirmed.

80. It shall appear that deductions towards provident fund of the applicant was initially made by IFFCO & till 1995 it was deposited in the account of the trust of IFFCO & from 1995 onwards after the contractor was allotted a separate PF code the PF deposited in trust of the IFFCO where deposited in the PF account of contractor. As the deductions were being made & deposited in the account of trust of IFFCO till 1995 this was treated to be another factor along with others by the labour court to arrive at a conclusion that workman was direct employee of IFFCO. Beside this, the contractor in witness box during cross examination had himself alleged that he did not engage the workman. These two important aspects beside other associated facts were major contributing points for the labour court to come to the conclusion that the workman was in the employment of IFFCO & he was not an employee of the contractor. In the present case there is no such statement of contractor existing in favour of applicant workmen that they have not been engaged by contractor. In the present case it is contention of the workmen that they are in the engagement through contractor but such contract is shame and camouflage. Hence, I am of the view that IFFCO case does not provide favour to applicants.

81. In 2010 LLR 69 (Jharkhand High Court), M/s Bharat Coking Coal Ltd.....Petitioner V/s Workmen, M/s Bharat Coking Coal Ltd. and Another.....Respondent, referred by learned representative of opposite party on the point of employer-employee relationship referring to para 53.13 & 54 of the case reported in 2009 LLR 923 S.C., International Airport Authority of India.....Appellants v/s International Air Cargo Workers' Union & Anr.....Respondents, it has been held by Hon'ble Jharkhand High Court in para 12 of the judgement as under :-

“Merely because the contract labour work is under the supervision of the officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer. Exercise of some control over the activities of contract labour while they discharge their duties as labourers, is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employees of the principal employer.”

82. In 2008 LLR 344 (Bombay High Court), Bhartiya Kamgar Sena.....Petitioner v/s Udhe India Ltd. and Another.....Respondents, referred by learned representative of opposite party on the point of employer-employee relationship it has been held that Hon'ble Apex Court in a catena of cases has held that the workers through the contractor working for many years would not be conclusive factors for determining the nature of relationship of employer-employee between the parties. It has been further held by Hon'ble High Court that it is well settled proposition in law that merely because a contract between principal employer & the contractor is existing for a very long time, that can not be clue to decide that the contractor was not genuine or shame or the arrangement was camouflage.

83. In 2002(I) LLJ 398 (Calcutta High Court), Damodar Valley Corporation.....petitioner v/s Damodar Valley Corporation Canteen Workers' Union and Others.....Respondents, referred by learned counsel for opposite party on the point of employer-employee relationship, according to the fact of the case 20 persons were working in the canteen & the longest period of service rendered by a person employed was since the year 1966. Other employees entered into the service in the year 1973 & 1992. Damodar Valley Corporation (DVC) was granting monthly subsidy to co-operative for meeting, establishment cost which includes salary, bonus & diverse allowances payable to the employee of the canteen. DVC had also sanctioned funds for procurement of utensils, furnitures etc for the canteen workers. The case of the DVC is that canteen caters not only to the employees of DVC but also other government offices which are situated in “Bhabani Bhawan” where canteen was situated & other government offices were also housed in “Bhabani Bhawan”. It was held by Hon'ble Single Judge of Calcutta High Court that employees of the co-operative canteen run by DVC employees Co-operative Canteen Ltd. are to be treated as the employees of DVC & they should be given the benefit of proper pay scale & other benefits as are admissible to the employees of DVC. On the basis of above findings it was directed by Hon'ble single judge to DVC authorities to pay the scale applicable to employees of non-statutory canteen as per directive of Govt. of India dated 24.11.86. Aggrieved by above order of dated 23.11.95 of Hon'ble Single Judge DVC preferred the appeal before Hon'ble Division Bench. The basic question before the Hon'ble Division Bench was whether the employees of the canteen in question are to be treated to be the employees of DVC. It was held by Hon'ble Division Bench in para 17 of the judgement as under :-

“17. Applying the ratio of the aforesaid cases to the facts and circumstances of the case in hand we are unable to sustain the finding of the learned single Judge for the following additional reasons:

- (a). It is nobody's case that DVC is under any obligation statutory or otherwise to provide Canteen service to its employees.
- (b). Grant of subsidy is not enough to hold that it is so done in discharge of any obligation of DVC to provide Canteen service.
- (c). At the highest, on the basis of the evidence, it can be said that DVC has undertaken the obligation to provide facilities to run a canteen which is not the same thing as to say that DVC is under an obligation to provide a Canteen. As a matter of fact this distinction was made in the Parimal Chandra Raha's case itself where Their Lordships held "the obligation to provide a canteen has to be distinguished from the obligation to provide facilities to run the Canteen. The Canteen run pursuant to the later obligation does not become part of the establishment."
- (d). There is nothing on record to show that the services of the employees of the Canteen are regulated by DVC or that DVC supervises or controls the work done by the members of the writ petitioner.
- (e). The Canteen in this case does not only cater to the employees of DVC. It also caters to the large number of employees working in different offices situate at Bhabani Bhawan in the city of Calcutta."

84. In 2001 (91) FLR 1172 (Gujrat High Court), *Bhartiya Karamchari Sangh ...petitioner v/s Oil & natural Gas Corporation Ltd. & others....* Respondents, referred by learned representative of non-applicant on the point of employer-employee relationship it has been held by Hon'ble Gujarat High Court that if contract between the contractor & principal employer for engagement of workmen through contractor is not found to be sham or bogus & workmen are not covered by notification issued regarding prohibition of employment of contract labour then relief of direction to absorb contract labour by principal employer cannot be granted.

85. Referred by learned representative of the applicant on the point of employer-employee relationship, in W.P. (C) 14828/2006 & CMs 2387/2012 & 9739/2012. The management of Ashoka Hotels Ltd. ....Petitioner v/s Their Workmen & another ..... Respondents, decided by Hon'ble Delhi High Court on 19.2.2013, employer-employee relationship between the principal employer the management of Ashoka Hotel & the workman was held to be existing because no valid agreement to supply contract labour between the principal employer i.e. the management of Ashoka Hotel & M/s Sparkling Enterprises Ltd was found. The contract was said to have been entered in the year 1999 whereas workmen were working since 1995 & there was no agreement existing after the year 2005. Sanction of Leave to the workmen was made by the management of the Hotel. There was tri-partite agreement to show that management of the Hotel was to pay the salary. The case of management of the Hotel was that there was agreement on 18.7.2000 with M/s Sparkling Enterprises Ltd for a sum of Rs. 190000/- for cleaning of kitchen & allied area whereas the case of the M/s Sparkling Enterprises Ltd was that it was working on the commission basis which was 10%. In above circumstance, the contract between M/s Sparkling Enterprises Ltd & principal employer was held to be sham & camouflage by the learned tribunal which was upheld by Hon'ble High Court. The case of Ashoka Hotel Ltd is distinguishable from the fact & circumstances of the present case. Cited case accordingly does not provide favour to applicants.

86. Referred by learned representative of the applicant on the point of employer-employee relationship, in 2016 S.C.L.J. 316, *General Manager, ONGC, Silchar.....Appellant v/s ONGC Contractual Workers Union.....* Respondents, on consideration of material before it as per para 12 of the judgment the learned tribunal concluded :-

- “(1) That there existed a relationship of master and servant.
- (2) That there was no contractor appointed by ONGC.
- (3) That the ONGC used to supervise and allot works to individual workers.
- (4) That the ONGC took disciplinary action and called for explanations from the workers.
- (5) The workers were paid wages though they did not attend their duties due to Cachar Bandh and due to flood.
- (6) The wages were paid direct to the workers by the ONGC and the acquaintance roll was prepared by the Management to make payment to the workmen”.

87. The tribunal on the basis of above conclusion vide award dated 11.7.94 held that member of the union were employees of the ONGC & accordingly issued the direction that their services be regularized in phased manner with pay & allowances permissible to regular employees. The award of the tribunal was challenged by the ONGC on the ground that members of the union were employees of the contractor & not the ONGC & as such there was no obligation on the part of the ONGC to regularize their services. Award of the tribunal was set aside by Hon'ble Single Judge. A writ appeal before the Hon'ble Division Bench against the order of Hon'ble Single Judge was allowed

reversing the award of the Hon'ble Single Judge. Appeal against the award of Hon'ble Division Bench was dismissed being devoid of merit.

88. The basic issue in the case was whether members of the union were employees of the ONGC or the contractor. It was admitted by the ONGC that since 1988 there was no licensed contractor & wages were paid through one of the leaders of the union. It was found by tribunal from the record that one contractor named Manik was in fact a workman who was existing on the roll of the ONGC & received wages. In above fact & circumstance, the contractor was found to be a camouflage & members of the union were declared to be employee of the ONGC entitled for regularization. By no means it can be said that the law laid in the case of 2016 S.C.L.J. 316, General Manager, ONGC, Silchar.....Appellant v/s ONGC Contractual Workers Union.....Respondents, can be applied in the present case. Accordingly, I am of the view that the case is distinguishable & not applicable in the fact & circumstances of the present case.

89. Referred by learned representative of the applicant on the point of employer-employee relationship, in 2011 (131) FLR 759, Bhilwara Dugdh Utpadak Sahkari Sangh Ltd.....Appellant v/s Vinod Kumar Sharma (Dead) by LRs & others.....Respondents, it was held by learned labour court that workmen were employees of appellant & not of the contractor. In observation of the learned labour court there were two categories of workman. The first category was of the concerned workmen claiming to be the employee of appellant working under the orders of the officers of the appellant & they were receiving per person Rs.70/- per day as wage. The second category of the workmen were workman/employee of the contractor receiving Rs.56/- per day. Based on above categorisation & absolute control & supervision of the officers of the appellant it was held by learned labour court that the first category of workmen were the employee of the appellant & not of the contractor. The Hon'ble High Court refused to interfere with the finding recorded by learned labour court. Appeal against the award of Hon'ble High Court was dismissed by Hon'ble Supreme Court. The case cited above is distinguishable on fact & provides no favour to the applicant.

90. In 2005- II- LLJ 138 (Madras High Court), Management of EID Party (India) Ltd, Ranipet.....Petitioner v/s Presiding Officer, Labour Court, Vellore and Another.....Respondents, referred by learned representative of the applicant, reference made to the labour court for adjudication was whether the persons named in the reference working in the canteen of E.I.D. Parry were employees of the factory. This reference was pending before the learned labour court for adjudication as I.D. No. 263/2001. During pendency of the disposal of above said reference a settlement u/s 18(1) of Industrial Disputes Act had been arrived between the parties concerned on 10.1.86. The settlement dated 10.1.86 was modified by another settlement dated 26.7.90. According to the settlement the workmen under reference were to be taken in the canteen roll of the management w.e.f. 1.4.2001 & their respective date of entry into the service of the management was to be treated effective from 1.4.2001. The settlement was also having detail of pay structure & allowances. Settlement dated 10.1.86 contained a paragraph as under :-

“The provision of this settlement shall come into force for implementation only from the date on which the Labour Court, Vellore, passes the award in I.D. No. 263 of 2000 in terms of this settlement. Otherwise, this settlement will not become operative. On passing of the award in terms thereon, the provisions of the settlement shall be enforced for a period of five years from the date it comes into force as stated therein.”

91. The above mentioned paragraph about implementation of the settlement was deleted by settlement dated 23.7.90, thus, the settlement dated 10.1.86 stood modified to that extent. It was agreed that a joint memo annexed with copy of settlement shall be filed before labour court in I.D. No. 263/2000 & according to the alleged agreement management filed I.A. No. 243/2001 to pass the award in term of settlement. The learned labour court dismissed the application for passing award with reason that one Sh. Udayan had not signed the settlement who was not in service on the date of agreement & in relation to Sh. Udayan there was a dispute as to whether he was dismissed from service or had resigned voluntarily. The learned labour court also was of the view that the management was having doubt whether the agreement was legally valid because of deletion of averment about implementation. Aggrieved by the order of dismissal writ petition was filed before Hon'ble High Court which was allowed, the order of dismissal of the application was quashed & learned labour court was directed to pass an award in conformity with the agreement. The Hon'ble High Court observed that the labour court had overlooked the fact that paragraph deleted in settlement dated 10.1.86 had been deleted as result of subsequent settlement dated 23.7.90, hence, the entire finding that the management was under doubt about the validity of the agreement was baseless. It was held by Hon'ble High Court that labour court should have pass the award as per settlement.

92. The law laid by Hon'ble High Court in 2005- II- LLJ 138 (Madras High Court), Management of EID Party (India) Ltd, Ranipet.....Petitioner v/s Presiding Officer, Labour Court, Vellore and Another.....Respondents, is to the effect that during pendency of a reference under adjudication if any settlement is filed by parties with request to dispose the reference under adjudication on the basis of settlement filed before the labour court or tribunal it is obligatory on the part of labour court or tribunal to decide the application & dispose the matter on the basis of settlement according to law.

93. During pendency of the reference under adjudication before this tribunal in the case of Oil India Ltd no request annexed with any settlement among the parties has been submitted to dispose the reference according to settlement, hence, the above cited case is of no avail to the applicant.

94. It has been argued by learned representative of the applicant that settlement of year 1994 & 1995 should be treated as binding on the parties to the settlement because in the settlement opposite party has agreed to regularize the above mentioned alleged 20 applicant workmen. The above argument has been repelled by learned representative of the opposite party on the ground that the settlement does not provide provision for mandatory or automatic regularization & it is subject to suitability of the workmen & availability of vacancy with opposite party. I have carefully gone through the settlements dated 11.8.94 & 26.12.95. Settlement dated 26.12.95 provides for absorption on the basis of seniority & suitability. Settlement dated 11.8.94 provides that management will refer the matter to head office for regularization of other contract labourers & a report will be submitted to ALC( C), Ajmer by 31.3.95. Settlement dated 11.8.94 provides agreement to absorb 16 contract labourer. Settlement dated 26.12.95 provides for absorption of 20 contract labourer on seniority and suitability basis. None of the two settlements have been signed by contractor who is a necessary party to this case. It is also pertinent to mention that Smt. Geeta Devi has joined as contract labourer on 20.8.96 & Sh. Sunil has joined as contract labourer on 15.4.97, much beyond the date of above settlements. In above fact & circumstances, I find it improper & unwarranted to go for making a decision whether these two settlements are binding or not, because no such issue has been framed in this connection like issue No.4.

95. Referred by learned counsel for the applicant, in 2014 (140) FLR 93 (Andhra Pradesh High Court), Power Grid Corporation of India Ltd.....petitioner v/s 17 workers, KHAMMAM & OTHERS.....Respondents, following points arose for consideration before the Hon'ble High Court :-

- (i) Whether the reference made by the State Government to the Labour Court under section 10(1) of the I.D.Act is bad;
- (ii) Whether the first respondent-Corporation is deemed to have engaged the petitioners/workmen.

96. In the cited case petitioners are security guards & employee of the second respondent M/s Private Eye Security Services, Secunderabad. First respondent is Power Grid Corporation of India Ltd. According to brief facts of the case petitioners/workmen were appointed as Security Guard in the First respondent Corporation in the year 1990 orally & they worked till their oral termination on 1.12.95. They pleaded violation of section 25-F, 25-G & 25-H of I.D. Act, 1947. It was further pleaded by petitioners that they did not have knowledge about agreement between First respondent & second respondent that they have been provided as contract labourers by respondent No.2 to respondent No.1. According to the case of First respondent there was agreement with second respondent to provide security services to First respondent for the period 1.12.94 to 30.11.95 on contract basis & period of contract expired on 30.11.95, thus, there is no employer-employee relationship between First respondent & 17 workmen petitioners. The case of the second respondent was in conformity with the case of the First respondent but on the date of agreement First respondent was not registered under section 7 of the CLRA Act & second respondent did not have license under section 12 of CLRA Act. The second respondent obtained the license on 30.12.94. Accordingly, on the date of agreement second respondent was not licensed under section 12 of CLRA Act. Admittedly, there was no notice to the petitioners workmen under section 25 of I.D.Act, 1947. Based on above fact & circumstances, the learned tribunal allowed the claim of the petitioner-union answering the reference in favour of workmen. Respondent No.1 Power Grid Corporation of India Ltd was directed to reinstate the workmen into service as Security Guards with continuity in service w.e.f. 1.12.94 without back wages. Aggrieved respondent No.1 preferred writ petition against the award of the learned tribunal which was dismissed & it was held by Hon'ble High Court that reference made by the State Government was not bad. Point No. 2 was answered in affirmative by the Hon'ble High Court & workmen were deemed to have been engaged by Power Grid Corporation of India Ltd in absence of valid registration of principal employer & a valid license by contractor under section 7 & 12 of CLRA Act respectively.

97. Based on above discussion I am of the view that the workmen in Schedule 'A' annexed to the reference are working with non-applicant establishment for last 12 to 19 years & nexus of employer-employee is not existing between principal employer & the workmen. The workmen are the employee of the contractor. Issue No. 1 is accordingly decided partly in favour of applicant & partly against the applicant.

## **Issue No. 2**

98. Issue No. 2 is to the effect, "whether the work discharged by the workmen in question is perennial in nature?" The burden of proof lies on applicant to prove that work discharged by the workmen is perennial in nature. The word 'perennial' means 'that happens often or that lasts for a long time' (Oxford English-English Dictionary, Seventeenth impression January, 2011). The above meaning of the word perennial shows that nature of the work carried out by the workmen should be of continuous & capable of prevailing for longer time.



99. It has been argued by learned representative of the applicants & stated in written argument that workmen of the petitioner union are continuously working & discharging the work of respondent management since last 25 to 30 years. Perusal of entire written argument of applicant union has reiterated in different ways and has laid stress that workmen are working continuously since last 25 to 30 years in the establishment of the management & this fact has been admitted in cross examination by respondent's witness that the witness is seeing the workmen working with respondent since the appointment of the witness in the year 1989. It has also been argued that there has been no cessation of work by the management since the engagement of workmen through contractor which shows that work is available with the respondent. Countering the above argument it has been argued & alleged in the written argument by the learned representative of the respondent that the main work of the Rajasthan Project of the respondent is excavation of well for discovery of oil & gas wherein high standard of technical knowledge is required and persons having such technical knowledge can only execute the work in the establishment of the respondent. It has also been argued that applicants allege and claim that they are working under control and supervision of officers and supervisors of the management and to escape the absorption/regularisation they allege that applicants are working through contractor but nature of work carried out by applicant workmen is not the same which are carried out by technically qualified regular employees of the respondent. According to learned counsel of respondent the work of the petitioner workmen is neither identical to the work of regular workmen engaged in excavation & exploration work nor integral to the production of oil & gas. It has been further alleged that applicant witnesses have been cross examined on the point of their technical knowledge & qualification wherein they have not stated clearly about their technical qualification & knowledge & no document about passing of any degree or technical skill has been filed on record by applicant side. Reliance has been placed on the cases reported in 2014 LLR 362 (Jharkhand High Court), Usha Martin Limited (Usha Ishmal Division) Ranchi.....Appellant v/s Dashrath Pandey.....Respondent & 2015 LLR 292 (Calcutta High Court), M.M.T.C Ltd....petitioner v/s The Learned Fourth Industrial Tribunal....Respondent.

100. Perusal of the agreement between contractor and principal employer clearly provide list of nature of work for which workmen have been engaged. Work description is self speaking that expected works to be carried out by workmen through contractor are not the work of scientific or technical nature connected with exploration of oil and gas. Assigned works in agreement are only fit to be continued till the project of search for oil and gas are carried out by respondent. Admittedly applicant workmen are not possessed with any technical qualification according to their own oral and documentary evidence. Settlement dated 4.5.98 also provide opportunity only for those workmen through contractor who are found eligible and suitable at the time of recruitment which means that they are required to attain a level of knowledge, skill & qualification to find themselves suitable for absorption/regularisation.

101. Much has been reiterated on the point that they are working for nearly 20 years and even witness for opposite party has alleged that list of same twenty workers are given to any contractor coming for agreement. In this context it is important to note that there is no such documentary evidence on record that management has been submitting list of these twenty workmen to incoming new contractor. There is also no record of any written agreement between these 20 workmen and management that they will always remain employee of opposite party through changing contractors. Settlement dated 4.5.98 certainly indicate that the workmen will be considered for appointment based on eligibility and suitability which does not speak of their compulsory engagement. These circumstances cannot form the basis to hold that their work is of perennial nature. Their engagement has been for the Rajasthan Project and maximum that can be assumed in their favour is that they may continue till the existence of project subject to their efficient performance as per agreement.

102. In 2014 LLR 362 (Jharkhand High Court), Usha Martin Limited (Usha Ishmal Division) Ranchi.....Appellant v/s Dashrath Pandey.....Respondent, reference for adjudication before the labour court, Ranchi was "Whether termination of services of workman Dashrath Upadhyay by the management of Usha Martin Industries Ltd, Ishmal Division, Tatisilwai, Ranchi is justified? If not, what relief the workman is entitled to?" The workman was employed through contractor. The workman has admitted in evidence that he was not given any appointment letter. Finding the violation of provisions of section 7 & 12 of CLRA Act the learned labour court passed the award in favour of workmen & appellant was directed to reinstate the workman Dashrath Upadhyay with full back wages. Appellant filed writ petition against the order of labour court which was dismissed by the court of Hon'ble single judge on 12.8.11. Appellant preferred appeal against the order of Hon'ble single judge which was allowed. It was held by Hon'ble Division Bench in para 16 of the judgement as under :-

"16. In the backdrop of the discussions made above and the settled law that violation of the provisions of C.L.R.A. Act does not give rise to automatic absorption of the workmen in the establishment and the violation of sections 7 and 12 of the CLRA Act will be visited by prosecution and penal consequences as provided under Sections 23 to 25 of the C.L.R.A. Act, resultantly this Court holds that the learned single Judge and learned labour court have not appreciated the provisions of law and the impugned award passed by the Labour Court and the judgment of the learned single judge cannot be sustained in view of the settled principle of law as held in the cases discussed above. As per the emerging broad features, we hereby set aside the award dated 04.06.1998

passed by the learned Labour Court and the judgment dated 12.08.2011 passed by the learned Single Judge. Accordingly, the appeal is hereby allowed.”

103. In 2015 LLR 292 (Calcutta High Court), M.M.T.C Ltd....petitioner v/s The Learned Fourth Industrial Tribunal....Respondent, in the order of reference for adjudication two issues were raised viz., whether the action of the management of the petitioner in not regularizing the 17 workmen was just and to what other relief the workmen were entitled to.

104. The case of the workman was that petitioner company was adopting unfair labour practice by not regularising the service of its casual workmen or daily wagers who had been working there uninterruptedly against regular vacancies. They were performing the job which were perennial nature. It was further submitted that after the abolition of contract labour system a direct relationship of employer & employee had been created between the workman & the petitioner & a right has been created in favour of workmen to be regularised as employees in the establishment in which they were working. As the petitioner company was neither registered as a principal employer nor was the contractor a licensed one the contract system was a mere camouflage & if veil of the petitioner is lifted it emerges as the real employer of those workmen. The contention of the petitioner company was that workmen are not the employee of the petitioner company on regular pay roll of the company & as such the union was not eligible to represent them. It was also submitted that since the petitioner is a Government of India Enterprise no reference can be made by the State Government & tribunal has no jurisdiction to entertain or adjudicate upon the same. On the point of employer-employee relationship it was submitted that labourers did not have any right of regularisation because they were employed by an employer & there was no employer-employee relationship between the petitioner MMTC Ltd & the respondent labourers. After appreciation of evidence adduced on behalf of both the parties the learned judge, Industrial Tribunal on the basis of violation of provisions of CLRA Act 1970 & the factum of contract labour not being genuine passed an award dated 31.3.11 holding the employees under reference to be employee of petitioner company which was held to be principal employer & the employees having worked for more than 240 days in the last preceding year regularisation of the service was not justified. Aggrieved by the order of the learned tribunal petitioner preferred writ petition before the Hon'ble High Court on the ground that CLRA Act, 1970 is totally inapplicable because the total number of workforce is less than 20 & the finding of the tribunal is not correct that factum of casual labour was not genuine. It was also submitted that there was clear evidence of employment of contract labourers by their employer Sh. Malik & the order of regularisation was passed without considering several factors as stated in writ petition. It was submitted by union the respondent No.3 that the workmen covered under the award had been continuously working for about two decade & discharging the same nature of job as are being performed by the regular employees rendering the action of the petitioner unfair labour practice. The contract labour system was also said to be a mere camouflage & draped in a paper agreement. The union further submitted that in exercise of power conferred by section 1 (IV) of the CLRA Act notification dated 29.3.76 was issued making provisions of the act applicable to establishments where more than 10 or more workmen were employed on any date of the preceding 12 month from the date of the notification. It was denied that CLRA Act is not applicable & further alleged that establishment of the principal employer was not registered u/s 7 & contractor Sh. Malik was not licensed u/s 12 of CLRA Act, hence, writ petition be dismissed. Referring to various pronouncements of Hon'ble Supreme Court & various High Courts referred from both the side the award of the learned tribunal was set aside. It was held by Hon'ble High Court in para 42 to 44 of the judgement as under :-

“42.In support of his contention that in the absence of any direction for regularization per se is not permissible. Mr. Ghosh has relied on the case of Hari Nandan Prasad and Another v. Employer I/R II Management of FCI and Another, 2014 (2) LLN 564 (SC): 2014 (2) SCALE 399. In that case admittedly the appellant had worked for more than 240 days continuously preceding their termination. The tribunal in its Award, inter alia, held that the termination was illegal and the appellant No.1 was entitled to be regularized in service. The Supreme Court specifically held that if there were no vacant posts such a direction for regularization would be impermissible. Giving direction to regularize a person only on the basis of the number of years put in by such a worker may amount to a backdoor entry into the service which is an anathema of Article 14 of the Constitution.

43. Thus, the finding of the tribunal that since the concerned employees in the present case had worked for 240 days in the preceding years their regularization is justified is an unjust observation in view of the settled position of law.

44. Thus the totality of the facts and circumstances and the evidence adduced, leave no manner of doubt that the Tribunal had passed the impugned Award clearly against the weight of evidence as well as the settled principle of law. It has not appreciated the evidence properly and ignored a major chunk of evidence and applied wrong legal tests to arrive at wrong decision. I find no reason to sustain this award.”

105. From the law laid down by Hon'ble Jharkhand High Court in Usha Martin Limited's case it is clear that remedy against violation of the provision of section 7 & 12 has been provided u/s 23 to 25 of CLRA Act & such violation does not provide condition for absorption/regularization of workman. From the law laid down by Hon'ble Calcutta High

Court in M.M.T.C. Limited's case it is clear that applicants were engaged for the period more than two decades but in absence of vacant post applicants engaged in perennial nature of work were held not entitled to regularisation/absorption because such absorption/regularization amounts to back door entry & violates the provision of Article 14 of the Constitution.

106. From above discussion of the fact and circumstances of the present case and perusal of the laws laid down by Hon'ble High Court of Jharkhand and Calcutta, I am of the view that nature of work carried out by applicants workmen is not perennial so as to form the integral part of the work required to be performed for excavation of well & exploration work of oil & gas. Issue No.2 is accordingly decided against the applicant in negative.

#### **Issue No.4**

107. This issue is to the effect, "Whether the settlement dated 4.5.98 is still binding upon the contesting parties?" Settlement dated 4.5.98 has been signed by Secretary, Sh. Babulal Parihar of contractor Sardar Shramik Theka Sahkari Samiti Ltd, Jodhpur, Sh. Hari Singh Bhati, General Secretary, Rajasthan Casual Employees Union, Sh. B.L.Sharma, General Secretary, Rajasthan Oil Employees Union (RP) & Sh. G.M.Khokan, Senior Manager (Administration), Oil India Ltd. Copy of settlement dated 4.5.98 is available on record as Ex-M-112 & Ex-M-113 proved by non-applicant witness Sh. Narayan Kalla, Deputy Manager. The settlement dated 4.5.98 has been forwarded to Regional Labour Commissioner (Central), Ajmer with a view to treat the item No.4 & 5 of the charter of the demands of the union dated 2.1.98 as settled in full. Before I discuss the issue whether the alleged settlement dated 4.5.98 is still binding on the parties or not it is necessary to mention the background of the settlement dated 4.5.98. The union had raised a demand vide notice dated 10.12.96 demanding absorption of 17 work contract labourers plus 3 relievers but during conciliation proceeding about above demand conciliation before Assistant Labour Commissioner (Ajmer) ended in failure & a failure report dated 27.11.97 was sent to the Secretary, Ministry of Labour, Govt. of India. Subsequently, union submitted a further 26 point charter of demand cum strike notice on 2.1.98 which included demand of regularisation of contract labourers & payment of same & similar wages to contract labourers which are given to regular employees. The Central Labour Authority, Ajmer intervened on the same which resulted into conciliation. In conciliation M/s Oil India Ltd (RP) took the stand that issue of contract labour is sub-judice because the matter is pending before the Ministry of Labour on basis of submission of failure report dated 27.11.97. In the mean time discussions were held among the parties at Bi-partite level wherein parties agreed to settle the dispute amicably, thus, settlement dated 4.5.98 came into existence. The opening lines of terms of settlement reads as under :-

"The direct employer, M/s Sarowar Shramik Theka Sahakari Samiti Ltd., Jodhpur of 20 works contract Labourers listed in the enclosed Annexure agreed to pay the said contract Labourers deployed on Oil India's jobs, wages comprising of Basic, DA at the undernoted rates."

108. After above opening line rate of payments to skilled & unskilled labourers have been given in form of basic pay & DA on daily rate basis based on basic pay & DA paid to the employee of principal employer at the minimum of pay scale of grade I employee for unskilled & grade IV employee for skilled labourer as on 1.3.98. After mentioning the rate of payment Oil India Ltd has agreed to reimburse the contractor about above agreed pay along with reimbursement to contractor on account of any overtime work done by labourers. Payment of bonus was also agreed in the settlement at noted rate in the settlement. After mentioning the terms of settlement as indicated above parties agreed to the following conditions before signing & concluding the settlement which reads as under :-

"The above terms are in full and final settlement of the Union's as well as listed contract labourers demand raised vide their aforesaid letters. **The Union's as well as the listed contract labourers hereby agree, that they will not raise any further demand of any kind in respect of the listed 20 contract labourers and agree to withdraw their demand of regularisation/absorption as the case may be pending with any Central Labour Authorities. However, as and when vacancy arises in Rajasthan Project of OIL in future, the listed Works Contract labourers will be given preference in the selection depending on their suitability and eligibility.**

Also the OIL Management, Rajasthan Oil Casual Employees Union and Rajasthan Oil Employees Union (RP) will jointly submit an application to the Conciliation Officer Cum Assistant Labour Commissioner (Central) alongwith a copy of this settlement for registration.

The aforesaid terms will be implemented only after the withdrawal of the dispute by the Union pending with the Assistant Labour Commissioner(Central), Ajmer as well as the Ministry of Labour, Government of India. However, the effective date of implementation will be 01<sup>st</sup> March, 1998."

109. From the above term of settlement it is clear that beside the things which has already been agreed upon between the parties the 20 contract labourers & their unions have categorically admitted & acknowledged that they are the employee of their direct employer M/s Sarowar Shramik Sahkari Sewa Samiti Ltd., Jodhpur, hence, stand taken by them in the present case that they are employee of the principal employer clearly stands baseless.

110. It has been argued by learned representative of the applicant & it has been mentioned in the written argument also that not only the settlement of 4.5.98 but the settlement of 1994 & 1995 are also binding, which indicates that the applicant side has no objection in holding the settlement of 4.5.98 binding upon the parties. To appreciate the above contention of learned counsel for applicant it is pertinent to mention that he has contended in written argument that in 1991-92 management has already absorbed 16 work contract labourers (WCL) when no settlement was existing between the parties. Later in 1994 a settlement was executed & consequently 16 workmen were absorbed. In 1995 another settlement was executed & another set of workmen (16+19) were absorbed. In above two settlement of 1994 & 1995 it was also agreed that all the WCLs will be absorbed in phased manner & consequently the respondent management acted upon that but after 1996 when the applicant workmen were not regularised then dispute was raised which was settled in 1998 vide the above settlement dated 4.5.98. Without objecting that settlement of 1998 is binding he further argues & contends that settlements of 1994 & 1995 are also binding. Since there is no issue to be adjudicated about binding nature of the settlements of 1994 & 1995 I do not undertake to adjudicate about settlements of 1994 & 1995 with admission of the learned representative of the applicant that the settlement of 1998 is having binding force.

111. The learned representative of the opposite party has argued & mentioned in the written argument that the settlement dated 4.5.98 is binding on the parties & due to the binding effect of settlement dated 4.5.98 present dispute raised under reference by alleged 20 workmen is baseless & not maintainable. Reliance has been placed on the cases reported in 1991 (1) LLJ 46 Supreme Court, (1) Barauni Refineries Pragtisheel Shramik Parishad..... Appellant v/s Indian Oil Corporation Ltd & others..... Respondents & General Secretary, Barauni Telshodhak Mazdoor Union v/s Jt. Chief Labour Commissioner (Central) & Others..... Respondents, 1994(2) LLJ 590 (Delhi High Court), Bluestar Limited .....petitioner v/s K.S.Khurana & others..... Respondents & 1980 (1) LLJ 227 (Bombay High Court)(DB), Association of Chemical Workers.....petitioner v/s Wahid Ali & others ..... Respondents. In 1991 (1) LLJ 46 Supreme Court, (1) Barauni Refineries Pragtisheel Shramik Parishad..... Appellant v/s Indian Oil Corporation Ltd & others..... Respondents it has been held by Hon'ble Supreme Court in para 10 of the judgement, “ ----- a settlement arrived at in the course of conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the Conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the union signing the settlement but also on others. That is why a settlement arrived at in the course of conciliation proceedings is put on par with an award made by an adjudicatory authority. The High Court was, therefore, right in coming to the conclusion that the settlement dated 4<sup>th</sup> August, 1983 was binding on all the workmen of the Barauni Refinery including the members of Petroleum and Chemical Mazdoor Union.”

112. In 1994(2) LLJ 590 (Delhi High Court), Bluestar Limited .....petitioner v/s K.S.Khurana & others..... Respondents, reference was made to the labour court for adjudication about dismissal of two workmen. During pendency of proceeding before the labour court a settlement was arrived between employer & the workman & consequent upon settlement workman rejoined the duty. One of the condition of settlement of re-employment was that workmen will not claim back wages or allowances. Accordingly, a joint applicant was filed before the labour court reporting the settlement between the parties. For over two years no order was passed by learned labour court on the application for one reason or other. At this juncture workmen sought back wages basing their claim on an alleged oral assurance & the labour court proceeded to make further enquiry about entitlement of back wages to the workmen, hence, management filed writ petition before the Hon'ble High Court. It was held by Hon'ble High Court in para 32 of the judgement as under :-

“32. It is not disputed before me that the settlements are binding on all the parties in terms of Section 2(p) and Section 18(1) of the Industrial Disputes Act. In this view of the matter and in the light of the above discussion, I hold that the Labour Court had committed a grave and serious error apparent on the face of the record in passing the impugned order dated October 18, 1989 and it was not open to the Labour Court to proceed to decide the questions which stood settled including the ones relating to the payment of back wages. Once a settlement is reached between the parties and this fact is brought before the Labour Court it is expected to respect the will of the parties and it cannot go into any question covered by the settlement except for a special reason, for, that would amount to reopening the settlement or undoing what had already been achieved by the parties. Such an approach of the Labour Court can have the consequence of inter alia disturbing the industrial peace by unduly prolonging the industrial dispute despite settlement between the parties. Such consequences would be contrary to the very object of the Industrial Disputes Act. ....”

113. In 1980 (1) LLJ 227 (Bombay High Court)(DB), Association of Chemical Workers.....petitioner v/s Wahid Ali & others ..... Respondents, it has been held by Hon'ble Bombay High Court in para 10 of the quoted judgement, “The word settlement undoubtedly presupposes the participation and consent of all the interested parties. Where workmen are members of the different unions, every union without regard whether represents a majority or minority

section cannot but be considered to be so interested. However, S.18(3) (d) appears to have been designed to meet some difficulties implicit in the collective bargaining with a floating army of workmen a few of whom may not choose to be the member of any union and, one or more unions may, for reason of its own may not like to reach the settlement. Legislature contemplates making such settlement binding even on such indifferent or unwilling workmen if the conciliation officer brings about it bona fide to ensure industrial peace. Intervention of the conciliating officer, and his belief in the settlement being fair and reasonable appears to be the basis of this provision which presently taken into account the impossibility of satisfying every section. ....”

114. Referred by learned representative of the applicant, in 2005 (105) FLR 416, Kapra Mazdoor Ekta Union .....Appellant v/s Management of M/s Birla Cotton Spinning & weaving Mills Ltd. & others.....Respondents, it was held by Hon’ble Supreme Court that settlement brought about while conciliation proceeding are pending are binding on all the parties u/s 18(3) of the Industrial Disputes Act, 1947.

115. It is apparent from perusal of the recitals of settlement dated 4.5.98 that applicants have agreed that they will not raise any further demand of any kind in respect of listed 20 contract labourers who are applicants in the present case & they have also agreed to withdraw their demand of regularisation/absorption pending before any central labour authority. Settlement further provides that as & when vacancy arises in Rajasthan Project of OIL the applicant will be given preference in selection depending upon their eligibility & suitability. Sh. Narayan Kalla in page 3 of cross examination has alleged that since 1996 till date of his evidence on 29.10.2015 there has been no recruitment against regular vacancy. On page 9 on 16.12.2015 during his cross examination he has alleged that since 1996 not a single person has been recruited. He has further alleged that there are differences about the nature of work carried out by contesting 20 contract labourers & those 60 persons who have been regularised. There is no dispute between the parties that recruitment has not taken place since 1996 owing to absence of vacancy. There is positive evidence to this effect that since 1996 there has not been any vacancy or any advertisement in relation to fresh recruitment. In above fact & circumstances, based on argument of learned representative of the parties & their pleadings, evidences & terms of settlement dated 4.5.98 & law laid down in the above mentioned citations relating to section 2(p) & section 18 of the I.D.Act, 1947, I am of the view that settlement dated 4.5.98 is binding on the parties. Issue No.4 is accordingly decided in affirmative against the applicants.

#### **Issue No.5**

116. This issue is to the effect “whether the concerned contractor is a necessary party in the dispute?” It has been argued by learned representative of the applicant that contractor is not a necessary party because according to term of reference the relief claimed by petitioner union for absorption is only against the management & no relief has been claimed by petitioner union against the contractor. It has been further argued & mentioned in the written argument that contractor was made party by the petitioner union at the beginning while filing the petition but respondent management moved an application to delete the contractor on the ground that contractor was not a party before conciliation proceeding, hence, management can not raise the issue on the principle of estoppel. Against this, it has been argued & mentioned in the written argument that Sh. Babulal Parihar, proprietor Sarowar Shramik Sahakari Samiti, Jodhpur was impleaded as respondent 3 by applicant but such impleadment of Sh. Babulal Parihar was objected by respondent management in the preliminary objection to statement of claim on the ground that in the reference dated 9.12.04 sent by Hon’ble Ministry for adjudication Sh. Babulal Parihar has not been shown as party to the reference, hence, applicant was not competent to implead Sh. Babulal Parihar as respondent to statement of claim. It has been further argued that the contractor was a necessary party but contractor was made a party in the petition without attempt by applicant to get the reference amended for impleadment of Sh. Babulal Parihar, hence, an objection was raised through reply to statement of claim & the learned tribunal after hearing both the party passed an order on 11.7.2005 to delete respondent No.3 Babulal Parihar & accordingly respondent No.3 was deleted. It has been further alleged that since union has filed the claim relating to 20 workmen, hence, related contractor of the 20 workmen is a necessary party to the proceeding which is clear from perusal of statement of claim, oral evidence of the witnesses & the agreement dated 4.5.98 which clearly indicate that above mentioned 20 workers have been working under the supervision & control of contractor & contractor has been a party in the agreement dated 4.5.98 also. It has been further alleged that it is the admitted case of the union that the alleged 20 workers are working in the establishment of the management through the contractor & for 20 workers contractor is the employer & covered within the definition of employer hence, without impleadment of contractor, statement of claim is liable to be rejected.

117. The main contention of the learned representative of the respondent is that vide order dated 11.7.05 name of Sh. Babulal Parihar was deleted from statement of claim because respondent No.3 Sh. Babulal Parihar was unauthorisingly impleaded by applicant, it does not mean that contractor is not the necessary party & objection by respondent was raised only because without any prior sanction of the government or the tribunal applicant had impleaded Sh. Babulal Parihar, hence, objection was raised by non-applicant. It was duty of the applicant to have the contractor impleaded by securing the necessary amendment in the reference from the Hon’ble Ministry or after filing of the claim by securing a suitable order of impleadment from the learned tribunal which has not been done by applicant union. It has been further

alleged in written argument that even union itself considered necessary to implead the contractor & they had impleaded respondent No.3 contractor at the time of filing statement of claim & this fact alone is sufficient to prove that the contractor is a necessary party to the proceeding & statement of claim is liable to be dismissed for non-joinder of necessary party.

118. It appears from perusal of the pleadings of the parties that it is admitted case of the applicant union as alleged in para 4 of statement of claim, “That all the above members of the petitioner union working under the supervision of officers & employees of respondent No.2 but artificially employed through the contractor i.e. respondent No.3 here. .... The artificial contractor respondent No.3 who is merely a camouflage smack & has been taken as a intermediate just to adopt the unfair labour practice & to violate the legal right of labourers who are actually discharging the duties against the work which is continuous & perennial in nature.....”. The role of the contractor i.e. respondent No.3 has been assigned in other paragraphs of the statement of claim also. In para 5 of statement of claim the contractor has been designated as supplier of the above mentioned 20 workmen. This fact is also not in dispute that contractor is a party to the agreement dated 4.5.98.

119. From perusal of order-sheet it appears that contractor has not been deleted from the statement of claim on application of the respondent as alleged in written argument of the applicant although there was objection on this point in the reply to statement of claim. Order-sheet dated 11.7.05 reveals that learned representative of the applicant filed rejoinder on 11.7.05 & himself requested orally to the court to delete the name of contractor from statement of claim because impleadment was made without permission of the court. This request was allowed by the court. Order-sheet also indicates that til 11.7.05 contractor was not even served with notice of claim. Thus, it is clear that deletion of the name of contractor from claim was on the motion of applicant himself & before deletion of name of the contractor from statement of claim his name stood deleted from rejoinder filed on 11.7.05.

120. On the point of necessity of impleading contractor as necessary party order 1 rule 3 & 9 of Civil Procedure Code is relevant which read as under :-

**“order 1 rule 3 . Who may be joinder as defendants.---All persons may be joinder in one suit as defendants where—**

- (a) Any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and
- (b) If separate suits were brought against such persons, any common question of law or fact would rise.

**Order 1 rule 9. Misjoinder and non-joinder.---No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it :**

(Provided that nothing in this rule shall apply to non-joinder of a necessary party.)

121. The allegations in statement of claim are alone indicators that should be looked into in order to decide whether a person is or is not a necessary party to a proceeding. Involvement & role of the contractor has already been stated by applicant in various paragraphs of statement of claim as indicated above. It has been repeatedly said that contractor is a camouflage & the true employer is Oil India Ltd. Obviously it has been intended by applicant that Oil India Ltd should be declared to be employer of the applicants & not the contractor. In above circumstances necessarily a relief has been sought against the contractor which has been desired in absence of contractor & without giving him an opportunity of hearing. A person is a necessary party to a proceeding in whose absence passing of an effective decree or order of adjudication is legally not possible. From the bare perusal of the provisions of order 1 rule 3 & 9 it is clear that contractor is a necessary party. Here, it is pertinent to mention that all the case-laws including 2015(144) FLR 1012 (Allahabad High Court), M/s. Indian Farmers Fertiliser Co-operative Ltd..... Petitioner v/s Presiding Officer, Labour Court & others..... Respondents, referred by learned representative of the applicant on the point of employer-employee relationship are having evidence of contractors of the employees impleaded as party to the respective cases. This fact also indicates that contractor is a necessary party in the present proceeding. Based on above discussion I am of the view that concerned contractor is a necessary party in the dispute. Issue No.5 is accordingly decided against the applicant union & in favour of respondent.

#### **Issue No.6**

122. Issue No.6 is to the effect, “whether the State Government being an appropriate government in this case, the reference made by the Government of India is bad in law?” It has been argued & also submitted in written argument by learned representative of applicant that consequent upon the order passed by Hon’ble Division Bench of High Court reference for adjudication was made by Central Government & order of Hon’ble Division Bench was not challenged by respondent management hence, the order has attained finality & not open to question. It has been further submitted that according to allegation of respondent management establishment of the respondent was registered under Rajasthan

Shops & Commercial Establishment Act, 1958 in the year 1985 for the purpose of marketing & distribution of oil products but renewal of registration has not been submitted before the tribunal & the main work of the respondent management is to excavate, manufacture & produce the oil & gas products for which the Central Government is the appropriate authority & workmen of the union have never been engaged for any marketing act hence, the appropriate government is the Central Government. It has been further submitted that settlements of 1994, 1995, 1998, 2005 & 2011 were executed before the Assistant Central Commissioner (Ajmer) wherein the respondent company was party who executed & partly implemented the settlements, hence, the respondent management can not be permitted to accept the authority of central government on one side & reject the matter of reference on other side. Countering the above argument it has been argued by learned representative of opposite party that reference order is bad in law which has been made by Central Government because the Oil India Ltd (Rajasthan Project) has been dully registered under Rajasthan Shops & Commercial Establishment Act, 1958, hence, for the purpose of reference connected with this case the appropriate government is Government of Rajasthan, thus, the tribunal is not having jurisdiction to adjudicate the reference under adjudication & the proceeding is liable to be quashed. It has been further argued that u/s 2(a)(ii) of Contract Labour (Regulation and Abolition) Act, 1970 the appropriate government is the government in whose jurisdiction the alleged business establishment is situated & the business establishment of Oil India Ltd is situated within the jurisdiction of Government of Rajasthan, hence, Government of Rajasthan is competent to make reference in relation to alleged dispute. Reliance has been placed on 2014 LLR, 1205, Himachal Pradesh High Court, Parvati Koldam Transmission Co. Ltd. v/s State of Himachal Pradesh. I have very carefully gone through the cited case. In 2014 LLR, 1205, Himachal Pradesh High Court, Parvati Koldam Transmission Co. Ltd. v/s State of Himachal Pradesh, two complaints were filed before the court of Judicial Magistrate-first class, Mandi under section 7 & 28(3) of CLRA Act by the concerned Labour Inspector of the Government of Himachal Pradesh. It was submitted by the petitioner company that Labour Inspector was not competent to file the complaint because he was authority of the State Government whereas company was holding a license issued by Central Electricity Regulatory Commission, hence, Central Government was the appropriate authority in the matter. It was held by Hon'ble High Court that non-existence of proof of relationship of master & servant *inter-se* the Petitioner-company and Central Government would be construed that the petitioner-company is located within the territory of the State Government. It was further held that as per provision of section 2(a)(ii) of CLRA Act Government of Himachal Pradesh is the appropriate government since the company is located in Himachal Pradesh. Here, it is pertinent to mention that facts of the case in Parvati Koldam Transmission Co. Ltd. is completely different wherein question before the Hon'ble High Court was whether Labour Inspector of Sundernagar was competent to file the complaint who was the authorised Labour Inspector of the area concerned. Section 28 of the CLRA Act provide provisions & authority available to Labour Inspector to enter any premises with assistance of any local or other public authority for inspection etc. In that context the propriety & jurisdiction of the Labour Inspector was questioned by the company. The above noted case is distinguishable in context of the fact & circumstances of the present case. Here, it is also pertinent to note that breach of provisions of CLRA Act are amenable to penal action in which only local authority & local Judicial Magistrate of the first class is empowered to take cognizance of the offences under the Act. In this context also only the state government of Himachal Pradesh is the appropriate government. The cited case law does not apply in present facts of the case.

123. Respondent has filed m-99 document which is duplicate copy of registration certificate under Rajasthan Shops & Commercial Establishment Act, 1958 which has been registered in 1985. The validity of registration has been up to 31.12.88. Subsequently, fee for one time renewal has been paid on 12.3.2004 & renewal has been done on 9.9.2004. Date of expiry of registration has not been mentioned in the certificate.

124. It is pertinent to mention that reference under adjudication has been made by Central Government in exercise of power conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Act No.14 of 1947) which is a Central Act. The 'appropriate government' shown u/s 2 (a) of I.D. Act, 1947 is Central Government in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government. As there is no dispute about the fact that establishment of the respondent is an industry carried on under the authority of the Central Government, hence, the argument of the learned representative of respondent is not sustainable that because the establishment of the respondent has been registered under Rajasthan Shops & Commercial Establishment Act, 1958, therefore, this tribunal is not having jurisdiction to pass an award on the basis of the reference under adjudication. Accordingly, I am of the view that the State Government is not the appropriate government in this case & the reference made by the Government of India is not bad in law. Issue No.6 is accordingly decided in favour of applicant & against the respondent.

### **Issue No.3**

125. This issue is to effect that, "Whether the workmen in question are entitled for their absorption in the non-applicant establishment?" From the finding of issue No.1 it has been settled that there has been no employer-employee relationship between principal employer Oil India Ltd & applicants workmen. Settlement dated 4.5.98 is binding between the parties wherein opportunity has been provided to the workmen to be absorbed depending upon their

eligibility & suitability in relation to vacancies as when they arise & process of recruitment takes place. Except this right that they will be considered for regularisation/absorption based on condition of settlement dated 4.5.98 depending upon their eligibility or suitability applicants workmen have no other right of absorption/regularisation. Accordingly I am of the view that workmen in question are not entitled for their absorption in the non-applicant establishment. This issue is decided in negative against the applicant.

#### **Issue No.7**

126. Before I close with conclusion it is pertinent to mention that wordings of the reference give an impression that some contract is existing between Oil India Ltd & contract labourers & in first part of the reference demand has been made to terminate such contract. The true position in respect of above contention is that there is no existing contract as alleged in the reference & no direct contract has ever been entered between principal employer Oil India Ltd & contract labourers relating to their engagement with former.

127. From the result of issue No.1 to 6 as mentioned above I am of the view that demand of the Rajasthan Oil Casual Employees Union (CITU) for termination of contract between the management of Oil India Ltd & 20 labourers as mentioned in Schedule A & for absorption of these labourers by Oil India Ltd is not justified. Thus, the concerned workmen are not entitled to any relief. The statement of claim of the applicants is liable to be dismissed. Accordingly, the statement of claim of the applicants is dismissed.

128. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 983.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 14/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/145/2015-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 11th April, 2017

**S.O. 983.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 14 of 2016) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 11.04.2017.

[No. L-20012/145/2015-IR (CM-I)]

M. K. SINGH, Section Officer

#### **ANNEXURE**

#### **BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

#### **Reference No. 14 of 2016**

Employer in relation to the management of Katras Area of M/s. BCCL

AND

Their workman

**Present :** Shri R.K. Saran, Presiding Officer

#### **Appearances:**

For the Employers :- Shri D.K.Verma, Advocate.

For the Workman :- Shri B.B.Pandey, Advocate

State : Jharkhand

Industry : Coal

Dated 23/02 /2017



**AWARD**

By order No.-L-20012/145/2015 IR-(CM-I), dated. 02/02/2016 the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

**SCHEDULE**

**“Whether the action of the management of Katras Area of M/S BCCL in dismissing Sri Binod Beldar Ex-M/Loader from the services vide letter dated 8/13.5.2006 is fair and justified? To what relief the concerned workman is entitled to?”**

2. The case is received from the Ministry of Labour on 11.02.2016 After receipt of reference , both parties are noticed. The workman files their written statement on 18.04.2016. And the management files their written statement-cum-rejoinder on 16.11.2016. Two document of workman marked as W-1 & W-2. The point involved in the reference is that the workman has been dismissed from his services.

3. The short point involved in this reference is that the workman has been dismissed from his services on absenteeism.

4. During Preliminary hearing. it is revealed that the case is dismissal of workman for long absence on duty. But he has already out of service for 11 years. It is felt to give another chance to the workman to serve.

5. Considering the facts and circumstances of this case, I hold that he be taken into job as a fresh employee as cat-I scale. But the workman be kept under probation for a period two year. Therefore the question of back wages does not arise at all.

This is my Award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 984.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचात (संदर्भ संख्या 22/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/02/2016-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 11th April, 2017

**S.O. 984.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 22 of 2016) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 11.04.2017.

[No. L-20012/02/2016-IR (CM-I)]

M. K. SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

**Reference No. 22 of 2016**

Employer in relation to the management of Kusunda Area of M/s. BCCL

AND

Their workman

**Present :** Shri R.K. Saran, Presiding Officer

**Appearances:**

For the Employers :- Shri D.K.Verma, Advocate.

For the Workman :- Shri Pintu Mondal, Rep.

State : Jharkhand

Industry : Coal

Dated 22/02/2017

### AWARD

By order No.-L-20012/02/2016-IR (CM-I), dated. 16/03/2016 the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

### SCHEDULE

**“Whether the action of the management of Alkusa Colliery under Kusunda Area of M/S BCCL in dismissing Sri Raja Ram Bouri, M/Loader vide letter dated 20.01.2007 is fair and justified? If not, to what relief the concerned workman is entitled?”**

2. The case is received from the Ministry of Labour on 28.03.2016 After receipt of reference, both parties are noticed. The workman files their written statement on 03.05.2016. And the management files their written statement-cum-rejoinder on 09.11.2016. The point involved in the reference is that the workman has been dismissed from his services.
3. The short point involved in this reference is that the workman has been dismissed from his services on absenteeism.
4. Domestic enquiry held by the management is accepted by the workman as Fair & Proper.
5. During Preliminary hearing. it is revealed that the case is dismissal of workman for long absence on duty. But he has already out of service for 10 years. It is felt to give another chance to the workman to serve.
6. Considering the facts and circumstances of this case, I hold that he be taken into job as a fresh employee as cat-I scale. But the workman be kept under probation for a period two year. Therefore the question of back wages does not arise at all.

This is my Award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 985.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 31/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/140/1995-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 11th April, 2017

**S.O. 985.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 31 of 1996) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 11.04.2017.

[No. L-20012/140/1995-IR (CM-I)]

M. K. SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

#### Reference No. 31 of 1996

Employer in relation to the management of Bararee Colliery of M/s. BCCL

AND

Their workman

**Present :** Shri R.K. Saran, Presiding Officer

**Appearances:**

For the Employers :- Shri D.K.Verma, Advocate.

For the Workman :- None

State : Jharkhand

Industry : Coal

Dated 21/02 /2017

**AWARD**

By order No. L-20012/140/1995-IR(C-I) dated 24/07/1996, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

**SCHEDULE**

**“Whether the action of the management in not regularizing Sh. Upendra Singh as sand Munshi since 1990 and dismissing him from the services of the company is justified? If not, to what relief the concerned workman is entitled?”**

2. After receipt of the reference, both parties are noticed. But appearing for certain dates by the workman, none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 986.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 33/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/162/1995-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 11th April, 2017

**S.O. 986.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 33 of 1996) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 11.04.2017.

[No. L-20012/162/1995-IR (CM-I)]

M. K. SINGH, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

**Reference No. 33 of 1996**

Employer in relation to the management of Kusunda Area of M/s. BCCL

AND

Their workman

**Present :** Shri R.K. Saran, Presiding Officer

**Appearances:**

For the Employers :- Shri D.K.Verma, Advocate.

For the Workman :- None

State : Jharkhand

Industry : Coal

Dated 22/02 /2017

### AWARD

By order No. L-20012/162/1995-IR(C-I) dated 26/07/1996, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

### SCHEDULE

**“Whether the action of the management in not regularizing S/Sh. Kanhai Chouhan and 7 others (as per list enclosed) as Tyndal Mazdoor is justified? If not, to what relief the workmen concerned are entitled ?”**

#### List of workmen

- |                       |                    |                             |
|-----------------------|--------------------|-----------------------------|
| 1. Sh. Kanhai Chouhan | 2. Sh. Rajai Nonia | 3. Sh. Jitu Gope            |
| 4. Sh. Sahebjan Mia   | 5. Sh. Uddin Mia   | 6. Sh. Ch. Rameshwar Mahato |
| 7. Sh. Harkhu Mahato  | 8. Sh. Narain Gope |                             |

2. After receipt of the reference, both parties are noticed. But appearing for certain dates, none appears by the workman subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 987.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कुवैत एअरवेज कार्पोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 2/52 of 2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-11012/17/2000-आईआर (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 11th April, 2017

**S.O. 987.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/52 of 2010) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in Annexure, in the industrial dispute between the management of M/s. Kuwait Airways Corporation and their workmen, received by the Central Government on 11.04.2017.

[No. L-11012/17/2000-IR (C-I)]

M. K. SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

**PRESENT :** M.V. DESHPANDE, Presiding Officer

#### REFERENCE NO. CGIT-2/52 of 2010

EMPLOYERS IN RELATION TO THE MANAGEMENT OF  
KUWAIT AIRWAYS CORPORATION

The Manager India,  
Kuwait Airways Corporation,  
86, Veer Nariman Road,  
Mumbai – 400 020.

**AND**

THEIR WORKMAN

The President,  
Kuwait Airways Corpn. Employees Association,  
On behalf of Mr. Ashok D. Bherwani,  
C/o. Joy Pinto, Hill View Apartment,  
6<sup>th</sup> floor, Room No. 26, Marol,  
Andheri East,  
Mumbai – 400 059.

**APPEARANCES:**

FOR THE EMPLOYER : Ms. V. Mishra, Advocate.

FOR THE WORKMAN : Mr. M.S. Jambaulikar, Advocate.

Mumbai, dated the 20<sup>th</sup> February, 2017.

**AWARD**

1. This is the reference made by the Central Government in exercise of powers under clause (d) of sub section 1 and sub section 2A of Section 10 of Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour, New Delhi Order No. L-11012/17/2000 (G-1) dated 07.02.2000. The terms of reference given in the schedule are as follows:

“Whether the action of the management of Kuwait Airways, Mumbai in terminating the services of Shri Ashok D. Bherwani w.e.f. 1.3.1999 is legal and justified ? If not, what relief the workman concerned is entitled to ?”

2. The instant reference has been contested on behalf of Mr. Ashok D. Bherwani, an employee of Kuwait Airways Corporation (hereinafter referred to as Corporation for short) by the Kuwait Airways Corporation Employee's Association, Mumbai, since the employee was a member of the Union. The employee joined the service of the Corporation on 18.6.1976 as Accounts Clerk. He was promoted to Senior Accounts Clerk and drawing a salary of Rs. 2,400/- p.m. at the time of termination of service. While working as such, the employee received a memo dated 3.12.1998 (Ex. W-5) by the Regional Director of the Corporation regarding misuse/loss of passenger tickets. The employee submitted his explanation vide letter dated 10.12.1998 (Ex. W-6) denying the allegations made against him and pointing out that the air tickets were not being issued by him but issued by Mr. Sam Gandhi to Mr. K.A. Chandran, Office boy, who was specifically deputed by the Airport to the Head office in accordance with the practice. He also forwarded the copy of the inventory along with his explanation denying any irregularity on his part. The employee received a letter of termination dated 15.1.1999 (Ex. W-7) to which the employee replied. The employee contacted Mr. Ahmed Bugrais, the then Manager-India of the Corporation and explained all the facts and circumstances. Thereafter, on 15.1.1999 itself the employee received a message at his residence to report for duty. Hence the employee reported for duty on 18.1.1999 (Monday). He resumed his duty as such. Thereafter, the employee received again a letter of termination dated 1.3.1999 (Ex. W-8) whereby the services were terminated with the close of the day i.e. 1.3.1999. This letter accompanied with a cheque of one month wages. Thereafter, the employee submitted his explanation and raised the demand through Employee's Association. The Industrial Dispute was raised. The proceedings for conciliation started before the concerned Conciliation Officer but it failed. On submission of the failure report the Central Government referred the dispute to this tribunal.

3. The contention of the Corporation is that the instant reference is not maintainable since the employee is not a workman under section 2(s) of the Industrial Dispute Act (hereinafter referred to as the Act). It is alternatively contested that the service have been terminated for loss of confidence for which no charge sheet or enquiry was required.

4. Earlier Learned Presiding CGIT-1 has passed award on 6.2.2006. In this reference he granted reinstatement with full back wages to the workman whose cause was espoused by the union. As per the award passed by tribunal, corporation would be at liberty to issue a charge sheet and initiate the domestic enquiry and then imposing any punishment if it so desires.

5. Kuwait Airways Corporation has challenged the award vide WP No. 2581/2006 before Hon'ble High Court of Judicature at Bombay. The Hon'ble High Court quashed and set aside the award passed by the tribunal dated 6.2.2006 and remanded the reference to the tribunal to consider the matter afresh as per the order of Hon'ble High Court in the said Writ petition dated 9.10.2006. After the matter has been received upon remanded from the Hon'ble High Court of Bombay vide WP No. 2581/2006 additional issue is framed as per Ex.27 and parties were directed to adduce evidence.

6. First party Corporation has adduced the evidence of Shainaz Wadekar [Ex.51]. Thereafter both the parties have filed written arguments vide Ex.73 & Ex.74 respectively. Second party union has filed further additional written notes of arguments vide Ex.77.

7. Following are the issues for consideration and my findings thereon for the reasons to follow are as under:

Sr. No.	Issues	Findings
1	Whether Shri A.D. Bherwani can be held to be a workman under section 2(s) of I.A. Act, 1947 ?	Yes
2.	Whether Kuwait Airways Corporation proves that Shri A.D. Bherwani was involved in the acts of misconduct enumerated in show cause notice dated 3.12.98 and he was terminated rightly on the ground of loss of confidence vide letter dated 1.4.1999 ?	No
3.	Whether the services of Shri A.D. Bherwani was terminated by the first party company illegally and without following the due process of law on or from 1.3.1999 ?	Yes
4.	Whether the second party workman is entitled for reinstatement with full back wages and continuity of services on and from 1.3.1999 ?	Yes, As per final order.
5.	What relief ?	As per final order.

### REASONS

#### **Issue No. 1**

8. First party Corporation has questioned the status of workman under section 2(s) of I.D. Act, 1947. Section 2(s) of I.D. Act, 1947 contains the statutory definition of expression “workman”. The expression “workman” is defined by the substantive part of section to mean any person employed in an industry to do any manual, un-skilled, skilled, technical, operational, clerical or supervisory work for hire or reward. Subsequent part of the definition provides that expression does not include a person who falls within the purview of sub section (i) to (iv) thereof. Among the exception is a person who is employed mainly in the managerial or administrative capacity or who being employed in a supervisory capacity draws wages in excess of Rs.1600/- p.m. or exercises either by the nature of duties attached to the office or by the reason of the powers vested in him functions mainly of a managerial nature. In short the requirement to establish the status of the employee as workman under section 2(s) of I.D. Act, 1947 is that the substantive nature of duties of employee must be those which are specifically spelt out in section 2(s). It is, therefore necessary to advert the duties which were being performed by the workman Shri Ashok Bherwani and those are sought to be follows.

- i. he was signing cheques issued by the first party to 3<sup>rd</sup> parties.
- ii. Had custody of cash.
- iii. Authority to sign salary cheques.
- iv. Signing Trial Balance of the First Party.
- v. Signing Bank Reconciliation statements.
- vi. Custody of the Safe Keys.
- vii. Deposit of FTT to the Govt. Treasury.
- viii. Assistance in preparation of the Budget for the Mumbai Office.
- ix. Overseeing of the distribution of tickets both at the Airport Office and the Sales Counter.
- x. Initialing the Pay slip showing the deposits in the Chairman's Accounts deposited by the First Party with the Bank.
- xi. Preparation and signing of Asset Inventory.
- xii. Ensuring that closing of Accounts were done on time.
- xiii. Control of Suspense accounts.
- xiv. Prompt action in respect of the Debit Note.
- xv. Recommendation of leave.
- xvi. Nobody was working senior to him in the higher grade at Mumbai Station.

9. Learned Counsel for the first party submitted that Shri Ashok Bherwani was working as Senior Accounts Clerk and was incharge of account department in a supervisory / managerial capacity. It is submitted that he was drawing wages exceeding Rs. 24,104/- p.m. and he is not a workman under the provisions of section 2(s) of I.D. Act, 1947. Submission is also to the effect that the various duties performed by the employee clearly indicate that they were supervisory and did not pertain to the nature of clerical duties since he handled a lot of work in accounts area which requires a great trust to be reposed on him by the management.

10. In this respect it will have to be said that the designation of the employee is immaterial. The nature of duties must be such on the basis of which it may be clearly inferable that the employee was performing the managerial duties. The supervision of the accounts does not mean that the employee is a supervisor. In the instant case, the nature of duties have been clearly spelled out as stated by the employee himself in his evidence.

11. So far duties shown at Sr. No.15 is respect of recommendation of leave, it is submitted that the workman was recommending leave and duty was of supervisory nature. However, in this respect the witness of the first party Shainaz Wadekar has admitted in his cross-examination at Pg.11 Ex.51 that no employee can proceed on leave unless his leave application is approved by the Manager-India. He admits that leave application are processed by the Personnel Department. That would show that the concerned employee could only decide depending upon the work situation in the department whether to grant leave or not but he was not an authority to approve the leave. Admittedly the approval of Manager India was necessary who is the senior most officer of the Corporation. From this admission it can be seen that the Manager-India was the deciding authority whether to grant leave or not and concerned employee was recommending authority. Even if it is assumed that the concerned employee was recommending the leave that does not mean that he was doing the work of supervisory capacity. It appears that he just recommended the leave of one employee. That does not mean that he was authority to grant or reject the leave of employee.

12. That apart Shainaz Wadekar, the witness of the Corporation in cross examined has admitted that Shri Ashok Bherwani was paid Rs.200/- every month by the company as cash handling allowance. As per his own admission the registers being maintained by Shri Ashok Bherwani vide Ex.11 pg. 1 – 20 are petty cash registers. He even admits that during the period from 1998 to March 1999 the office of the company was managed by Shri Ahmed Bugrais who was Manager India. Documents at Ex.11 bears signature of Shri Ahmed Bugrais having approved. He then admits that Shri More was working in Accounts department as Senior Accounts Officer and staff members mentioned in the pay rolls are as per the seniority of staff members. His glaring admission shows that Shri More and Shri Ashok Bherwani were in Grade IV being Sr. Accounts Officers and the post of Senior Accountant is higher than Accounts Officer. Admittedly the company never issued any letter appointing Shri Ashok Bherwani as head of department. He even admits that Shri S.F. Doctor used to sign the cheque as first party signatory and he was signing cheques as sanctioning authority of the bills for which cheques were issued and Shri Ahmed Bugrais was sole approving authority in respect of payments through bank vouchers. Admittedly Shri Ashok Bherwani has no sole authority to sanction any payment of the Corporation. He had no authority to issue any cheques approved by Manager India. Even in respect of petty cash Shri Ashok Bherwani has no any authority to make any payment unless it is approved by Manager India. In view of these admissions, it can be also said that the concerned employee was not discharging the duties in manager capacity.

13. We have document Ex.43. The said letter clearly mentions that second party workman was working under the guidance of Mr. Mohd. E.L. Ariss. Even the second paragraph of said letter establishes that the second party workman was discharging the duties of clerical nature in as much as second party workman had sought approval from his superior to go to airport atleast two flight days to scrutinize the Air India handling bills to have practical idea of equipments supplied by Air India to flights in Bombay and operation part thereof including billing etc. The very fact shows that the second party employee had to seek written approval for physical task such as scrutiny of the bills. It shows that second party workman had no decision making authority.

14. Then we have document Ex.57 ie. Settlement dated 16.6.1995 wherein second party workman is covered in grade 6 & 7 as mentioned in Appendix II of the said settlement at Pg. 20. The said settlement shows that Senior Station Superintendent and other persons which are higher in grade as compared to the second party workman were also covered by the said settlement. Ex.57 shows that the Sales Manager in Gr. X, Sr. Supt. in Gr. IX & X, Catering Supervisor in Gr. VII and VIII are included in the said settlement which is signed under the provisions of I.D. Act, 1947. Even the first party witness Shainaz Wadekar has admitted that Mr. Timmnis was working as Sr. Station Superintendent. He was in a grade higher than concerned workman Mr. Ashok Bherwani. Mr. Alvino D'souza was a Sales Manager. He was higher in grade than Mr. Bherwani. Mr. Lobo and Mr. Timminis were retrenched with other employees. They have raised the dispute before the tribunal and then it appears from the documents on record that they were paid retrenchment compensation. It is even admitted that the matter was settled by paying some amount to them. Obviously, therefore the employees Mr. Lobo, and Mr. Timminis who were higher in grade than Mr. Bherwani were treated as employee and were paid compensation. Then it cannot be said that Mr. Bherwani was performing duties of managerial and supervisory nature.

15. Even the salary of the employee is immaterial. In this context, the hand can be laid on the decision in case of *HR Adyanthaya VS. Sandoz (I) Ltd. & Ors.*, 1994 II CLR 552 wherein it is held that it is not sufficient to demonstrate that the employee does not fall within any of the exception laid down in section 2 (s) of I.D. Act. In other words, it is necessary to order for an employee to be a workman under section 2 (s) that the nature of the duties and functions cast upon him fall within the purview of the work, which is specifically provided for in the first para of the definition. The Supreme Court held as follows

“Hence the position in law as it obtains today is that the person to be workman under I.D. Act must be employed to do the work by any of the categories viz. manual, un-skilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the 4 exceptions to the definition.”

16. Even then the Learned Counsel for the first party management submitted that the concerned workman Shri Ashok Bherwani was working as Senior Accounts Officer and was incharge of accounts in a supervisory / managerial capacity. Submission is to the effect that the duties performed by the concerned workman clearly indicate that they were supervisory and merely because some of his actions were subject to approval of manager would not make him any less than supervisor.

17. At the first blush I would observe that the reconciliation of figures in the accounts is a mechanical type of clerical work and that does not mean that the employee is not a workman. The nature of duties must be such on the basis of which it must be clearly inferable that the employee was performing the managerial duties. Supervision of accounts does not mean that the employee is a supervisor.

18. That apart the facts remain that in Ex.57 i.e. in the said settlement the name of concerned workman is covered as workman along with others viz. Mr. Timminis & others. The said settlement Ex.57 is signed under section 2(p) read with section 18 (1) of I.D. Act, 1947 between the first party and the union. That settlement means the settlement arised in between employer and workman. That would again show that the first party management all the while treated the concerned employee as a workman on the basis of dominant duties exercised by the concerned employee.

19. Considering the duties performed by the employee and looking to the evidence adduced by the first party coupled with the documents particularly Ex.57 and the copies of Ref. 156/2001 which is in respect of employees Mr. Timminis & Others who are considered to be employee in higher grade than that of concerned employee, I find that the concerned employee Shri Ashok Bherwani is a workman. The issue No. 1 therefore answered accordingly.

### **Issue No. 2 & 3**

20. In this respect admittedly no charge sheet or inquiry has been there against the workman. The charges of misconduct for loss of confidence include the allegations that the workman committed fabrication and irregularities by issuing hundreds of tickets illegally and thereby causing heavy monitory losses to the Corporation. The letter of termination having aforesaid allegations was issued by the Corporation to the employee on 15.1.1999 but it was unilaterally withdrawn by the Corporation on receipt of explanation of employee to Manager India. Corporation has issued another letter of termination on 1.3.1999 repeating the same allegations and terminated the services as per letter of termination dated 1.3.1999. It is, therefore, the case of Corporation that the services of the concerned employee Shri Ashok Bherwani came to be terminated for loss of confidence because he committed fabrication and irregularities by issuing hundreds of tickets illegally and thereby causing heavy monitory losses to the Corporation.

21. Corporation's witness Shainaz Wadekar Ex.51 has stated that being the head of accounts department, Mr. Ashok Bherwani sent a stock of tickets without any requisition from airport office and by not following regular procedure. Out of said release tickets stock, certain number of tickets went missing and were fraudulently and un-authorisely used for travel which resulted in heavy loss to Kuwait Airlines Corporation. As per his evidence the concerned workman forwarded the false revenue stock report as on 30.6.1988 to the Head office for audit purpose. The report was showing the incorrect position of the tickets stock. As such he neglected Kuwait Airlines Corporation bank account and did not adhere to any requirement of sales report / DSR or passenger sales report / PSR and said inaction on his part caused the Corporation huge monitory loss. He then states that memo dated 3.12.1998 was issued to Shri Ashok Bherwani and the reply given by him was not found satisfactory. He claims that because of that, first party by its letter dated 15.1.1999 terminated the services of Shri Ashok Bherwani on the ground of loss of confidence.

22. His cross examination blows of his version in this respect. He admits in his cross examination that he was not in service at the relevant time. As per his own admission the contents in respect of issuing of tickets by the concerned workman Shri Ashok Bherwani are not based on his personal knowledge. Meaning thereby that he has no personal knowledge whether those tickets were issued by the concerned workman or not ?

23. So in respect of these allegations it was for the management to adduce the evidence of a person who has received the stock of tickets from the concerned workman and to prove that such issuance of tickets by him was without any requisition from the authority concerned. I say so because in his evidence Shri Ashok Bherwani has stated



that he clarified in his explanation the practice and procedure of sending tickets from the office to the airport and further clarified that he did not issue the tickets but the same were issued by Shri Sam Gandhi to Mr. K.A. Chandran, office boy who was specifically deputed by the airport to the Head office in accordance with the practice of the first party corporation. In that respect the evidence of Shri Sam Gandhi and Mr. K.A. Chandran was essential to show whether the said tickets were sent to the airport by the concerned workman. The Corporation has not adduced their evidence and therefore their non-examination goes to the root of matter.

24. I say so because the person who has been examined by the Corporation Shainaz Wadekar was not in service at the relevant time. He does not have personal knowledge about the facts in respect of issuance of tickets which were allegedly lost. If no person who was in employment or concerned with the facts in respect of those allegations of missing tickets has been examined then it will have to be said that the management has failed to prove the charges in respect of which the notice of termination was issued to the concerned workman.

25. Even then the Learned Counsel of first party Corporation submitted that since the concerned workman was custodian of keys, he can be held responsible for loss of tickets. Submission is to the effect that the opportunities were given to the concerned employee to prove that he was not in any way involved in the act occurred on 13.5.1998. Here in the instant case it can be said that it was for the management Corporation to prove the charges in respect of allegations made against the concerned workman. Merely because concerned workman was custodian of keys is not sufficient to establish that he was responsible for loss of tickets as alleged. It is in that circumstances, it appears that management Corporation has withdrawn the letter of termination dated 15.1.1999 to prove his innocence but then again terminated his services on the same ground of loss of confidence with the allegations that he released the stock of tickets and certain number of tickets went missing and were fraudulently and un-authorisely used for travel. In respect of these allegations no charge sheet is issued nor the enquiry is held.

26. The order of termination on the ground of loss of confidence causes stigma on the employee. In the instant case it was expected of Corporation to adduce evidence rather cogent evidence to establish loss of confidence. As seen earlier, the witness which has been examined by the Corporation has no personal knowledge as regards the facts alleged in respect of loss of tickets etc. Upon assessment of evidence, it cannot be said that the Kuwait Airlines Corporation has established that the concerned employee Shri Ashok Bherwani was involved in acts of misconduct enumerated in show case notice dated 3.12.1998. Obviously therefore his termination on the loss of confidence is illegal and unjustified. Hence, I answer the above issues accordingly as indicated against each of them in terms of above observations.

#### **Issue No.4 & 5**

27. In view of my findings to the above issues, I find that the termination of concerned workman Shri Ashok Bherwani is illegal and unjustified. He is therefore entitled to reinstatement.

28. In respect of back wages, evidence led by the parties show that the workman has not been gainfully employed after his termination from 1.3.1999. The fact has come on record that the son of concerned workman has become doctor and therefore submission on behalf of the Corporation is that the concerned workman must have spent amount towards the education of his son which would show that he would not have been able to make his son a doctor unless he was gainfully employed.

29. This submission is not acceptable since there is no evidence to show that after termination the concerned workman was gainfully employed. It is in that circumstances it can be said that the concerned workman is entitled to full back wages. The issues are answered accordingly. Hence order.

#### **ORDER**

- 1) The termination of the services of workman is illegal and unjustified.
- 2) The workman is entitled to be reinstated immediately with full back wages.
- 3) Award is made accordingly.

Date: 20.02.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 988.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टिस्को के प्रबंधन के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 58/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/231/1995-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 11th April, 2017

**S.O. 988.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 58 of 1996) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. TISCO and their workmen, which was received by the Central Government on 11.04.2017.

[No. L-20012/231/1995-IR (CM-I)]

M. K. SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

#### Reference No. 58 of 1996

Employer in relation to the management of Jamadoba Colliery of M/s. TISCO

AND

Their workman

**Present :** Shri R.K. Saran, Presiding Officer

#### Appearances:

For the Employers :- Shri D.K.Verma, Advocate.

For the Workman :- None

State : Jharkhand

Industry : Coal

Dated 23/02 /2017

### AWARD

By order No. L-20012/231/1995-IR(C-I) dated 20/08/1996, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

### SCHEDULE

**“Whether the Management of Jamadoba Colliery of M/s TISCO is justified in not providing employment to Smt. Dipali Banerjee wife of Late Gopal Banerjee-II who died in harness? If not, to what relief is the concerned workman entitled?”**

2. After receipt of the reference, both parties are noticed. But appearing for certain dates, none appears by the workman subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 989.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 53/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/452/1998-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 11th April, 2017

**S.O. 989.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 53 of 1999) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. CCL and their workmen, which was received by the Central Government on 11.04.2017.

[No. L-20012/452/1998-IR (CM-I)]

M. K. SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

**Reference No. 53 of 1999**

Employer in relation to the management of Kargali Colliery of M/s. CCL

AND

Their workmen

**Present :** Shri R.K. Saran, Presiding Officer**Appearances:**

For the Employers :- None

For the Workman :- Shri B.B. Pandey, Advocate.

State : Jharkhand

Industry : Coal

Dated 21/02 /2017

**AWARD**

By order No. L-20012/452/1998-IR(C-I) dated 17/04/1999, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

**SCHEDULE**

**“Whether the action of the management of Kargali Colliery of M/s CCL, Bokaro in not providing opportunity to appear before the Medical Board to Shri Ramayan Sharma Ex- Foreman as per directions dt. 07/04/1994 of Hon’ble Supreme Court of India and in not providing employment to his dependent is legal and justified? If not to what relief the concerned workman and his dependant are entitled?”**

2. After receipt of the reference, both parties are noticed. But During the pendency of the case , Ld. Counsel for the workam submits that workman is not interested to contest the case. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 990.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 113/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/363/1995-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 11th April, 2017

**S.O. 990.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1,

Dhanbad (I.D. No. 113 of 1996) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 11.04.2017.

[No. L-20012/363/1995-IR (CM-I)]

M. K. SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

#### Reference No. 113 of 1996

Employer in relation to the management of Mudidih Colliery of M/s. BCCL

AND

Their workman

**Present :** Shri R.K. Saran, Presiding Officer

#### Appearances:

For the Employers :- Shri D.K.Verma, Advocate

For the Workman :- None

State : Jharkhand

Industry : Coal

Dated 23/02 /2017

#### AWARD

By order No. L-20012/363/1995-IR(C-I) dated 21/11/1996, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

#### SCHEDULE

**“Whether the action of the management of Mudidih Colliery of M/s BCCL in dismissing Sri Anand Roy from the services of the company is justified? If not, to what relief is the concerned workman entitled?”**

2. After receipt of the reference, both parties are noticed. But appearing for certain dates by workman, none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 991.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 57/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/216/1995-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 11th April, 2017

**S.O. 991.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 57 of 1996) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 11.04.2017.

[No. L-20012/216/1995-IR (CM-I)]

M. K. SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

**Reference No. 57 of 1996**

Employer in relation to the management of Bhowra Area of M/s. BCCL

AND

Their workman

**Present :** Shri R.K. Saran, Presiding Officer**Appearances:**

For the Employers :- Shri U.N. Lall, Advocate.

For the Workman :- None

State : Jharkhand

Industry : Coal

Dated 15/03 /2017

**AWARD**

By order No. L-20012/216/1995-IR(C-I) dated 23/08/1996, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

**SCHEDULE**

**“Whether the action of the Management of Bhowra Area in not promoting Shri Shivanand Prasad in (Grade ‘B’Excavation EP Electrician) w.e.f. 1992 is justified? If not, to what relief is the concerned workman entitled?”**

2. After receipt of the reference, both parties are noticed. But appearing for certain dates by the workman, none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 992.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 77/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/272/1995-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 11th April, 2017

**S.O. 992.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 77 of 1996) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 11.04.2017.

[No. L-20012/272/1995-IR (CM-I)]

M. K. SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

**Reference No. 77 of 1996**

Employer in relation to the management of Akashkinari Colliery of M/s. BCCL

AND

Their workman

**Present :** Shri R.K. Saran, Presiding Officer

**Appearances:**

For the Employers :- None

For the Workman :- None

State : Jharkhand

Industry : Coal

Dated 23/02/2017

### AWARD

By order No. L-20012/272/1995-IR(C-I) dated 26/09/1996, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

### SCHEDULE

**“Whether the Claim by the Union that Sh. Karu Bhuia is the dependent son of Late Tatri Bhuini, Ex-Wagon Loader is justified? If so, whether shri Karu Bhuia is eligible for employment under NCWA Provisions on the basis of the claim raised 6 years after the death of the workman? If so, to what relief is death of the workman? If so, to what relief is shri Karu Bhuia entitled?”**

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 993.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लाईफ इंशोरेंस कारपोरेशन ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 1060/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-17012/46/1993-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 11th April, 2017

**S.O. 993.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1060/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the Industrial Dispute between the management of Life Insurance Corporation of India and their workmen, received by the Central Government on 11.04.2017.

[No. L-17012/46/1993-IR (B-II)]

RAVI KUMAR, Desk Officer

### ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD**

**Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 27<sup>th</sup> June, 2016

**Reference: (CGITA) No. 1060/2004**

The Senior Divisional Manager,  
LIC of India,  
LIC Office, Tagore Marg,  
Mahila College Chowk,  
Rajkot (Gujarat)

...First Party

V/s

Shri Bhavesh B. Pattani,  
C/o Bipinchandra H. Pattani,  
Kamdar Street, Dhoraji  
Rajkot (Gujarat)

.....Second Party

For the First Party : Shri K.V. Gadhia

For the Second Party : Shri Bhavesh B. Patni &amp; Shri H.D.Kathrotiya

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-17012/46/93-IR (B-II), dated 28.07.1997 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the action of the management of Life Insurance Corporation of India Ltd., Dhorji Branch in terminating the services of Shri Bhavesh B. Pattani is legal and justified? If not, to what relief the said workman is entitled?”

1. The reference dates back to 28.07.1997. The second party submitted the statement of claim Ext. 2 on 24.09.1997. First party also filed written statement Ext. 13 on 06.12.1999. Second party also moved the application Ext. 14 for production of documents on 18.07.2002. First party filed the reply Ext. 23 on 19.03.2009. Since then the parties have not been appearing. On 22.02.2016, Shri H.D. Kathrotiya Advocate sought time to inform the second party for either engaging another counsel or to seek instruction to conduct the case. But today on 27.06.2016, he did not inform the court as to whether second party is willing to prosecute the case. Thus, in the said circumstances it can be said that second party has no intention to prosecute the case.

2. Thus, the reference is dismissed in non-prosecution of the case by second party.

P. K. CHATURVEDI, Presiding Officer

दिल्ली, 11 अप्रैल, 2017

**का.आ. 994.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक न्यायालय, पूणे (महाराष्ट्र) के पंचाट (संदर्भ सं. 16/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-12011/19/2012-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 11th April, 2017

**S.O. 994.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2012) of the Industrial Court, Pune (Maharashtra) as shown in the Annexure, in the Industrial Dispute between the management of Bank of Maharashtra and their workmen, received by the Central Government on 11.04.2017.

[No. L-12011/19/2012-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE**  
**IN THE INDUSTRIAL COURT MAHARASHTRA AT PUNE**

**Reference (IT) No. 16 of 2012**

Asstt. General Manager,  
Bank of Maharashtra, Jeewan Tara , LIC bldg.,  
Koregaon Road, Powai Naka, Satara, Maharashtra

...First Party

**And**

The General Secretary,  
Bank of Maharashtra Karmchari Sangh,  
3rd Floor, Rajwada Bus Stop, Satara,  
Maharashtra

...Second Party

**AWARD**

(Dated : 01.02.2017)

This is a reference sent by Central Government by order dated 22/11/2012 under the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Dispute Act, 1947. The Central Government referred the said dispute for adjudication to this Tribunal in that the schedule is attached.

**SCHEDULE**

“Whether the action of management of the Bank of Maharashtra through its Asstt. General Manager, Satara Region in outsourcing the work which are of permanent nature at various branches in Satara Region, is legal and justified? What relief the concerned union is entitled to?”

2. After the receipt of the said reference notices are issued to both parties. Thereafter below Exh. U-6 the second party through advocate Shri R.P. Shaligram, appeared. But second party through appeared failed to file the statement of claim from the date of appearance.

This Court issued another notice by Court motion on 22.12.2016 to both parties. But both the parties failed to appear in this reference. The matter is pending since long without any progress. It appears that the second party does not want to proceed with the reference. Under such peculiar circumstances, no reason to adjourned the matter. Hence, I am inclined to pass following award.

**AWARD**

1. The reference is answered in negative due to want of prosecution by the second party.
2. No order as to costs.
3. The copies of this award be sent to the Central Government for a proper action.

Pune :

Dated : 01.02.2017

Sd/-

Secretary,  
Industrial Court, Pune

M. R. KUMBHAR, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 995.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में कन्द्रीय सरकार सैन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 163/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-12012/43/2006-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी



New Delhi, the 11th April, 2017

**S.O. 995.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 163/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 11.04.2017.

[No. L-12012/43/2006-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD**

**Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 21<sup>st</sup> February, 2017

**Reference: (CGITA) No. 163/2006**

The Regional Manager,  
Central Bank of India,  
Regional Office,  
Athugar Street,  
Nanpura,  
Surat (Gujarat) – 395001

...First Party

V/s

Shri Bhagubhai Harjibhai Patel,  
At. Post Naroli,  
Silvassa,  
Dadra Nagar Haveli (U.T.)

... Second Party

For the First Party : Shri P.S. Chari

For the Second Party : None

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/43/2006-IR(B-II), dated 28.08.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the action of the management of Central Bank of India through Regional Manager, Surat in imposing the penalty of discharge from bank service with superannuation benefits to Shri BhagubhaiHarjibhai Patel is legal, proper and just? If not, to what relief the concerned workman is entitled to?”

1. The reference dates back to 28.08.2006. The second party submitted the statement of claim Ex. 7 on 08.04.2008 and the first party submitted the vakalatpatra Ex. 12 along with written statement Ex. 14 on 19.09.2008 along with number of documents vide list Ex. 15. Earlier the case was pending in the State Industrial Tribunal and vide order 19.10.2010, the reference was received in this tribunal. Therefore, a notice was issued on 19.09.2011 to appear on 22.09.2011 for both the parties but the second party did not respond till 13.06.2014. Therefore, on 29.04.2014, a fresh notice was issued to both the parties to appear on 13.06.2014. The first party submitted the vakalatpatra Ex. 24 of his advocate. The second party was served and acknowledgement was also received.

2. The second party was given number of dates to appear and to lead evidence but to no result, therefore, on 29.09.2016, the second party though absent on 29.09.2016, was given last opportunity to lead evidence. Thereafter, one more opportunity on 20.12.2016 was also given to lead evidence on 21.02.2017. But today on 21.02.2017, the second party is still absent. Thus it appears that the second party workman has no willingness to prosecute the case.

3. Therefore, the reference is disposed of in absence of the evidence of the second party workman with the observation as under: “the action of the management of Central Bank of India through Regional Manager, Surat in imposing the penalty of discharge from bank service with superannuation benefits to Shri Bhagubhai Harjibhai Patel is legal, proper and just.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 996.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 1239/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-12012/160/2003-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 11th April, 2017

**S.O. 996.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1239/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure in the Industrial Dispute between the management of Dena Bank and their workmen, received by the Central Government on 11.04.2017.

[No. L-12012/160/2003-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

##### Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 30<sup>th</sup> March, 2017

##### Reference: (CGITA) No. 1239/2004

The Regional Manager,  
Dena Bank,  
Gokul Chambers,  
Dhebarbhai Road,  
Rajkot (Gujarat) – 360001

...First Party

V/s

Shri Premjibhai V. Bhalara,  
C/o Jayantibhai V. Bhalara,  
St. Chordi, Tal. Gondal,  
Rajkot (Gujarat)

...Second Party

For the First Party : C.S. Naidu Associates

For the Second Party :

#### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/160/2003-IR(B-II) dated 20.11.2003 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the action of the management of Dena Bank, Rajkot in terminating the services of Shri Premji Vasram Bhalara is legal and justified? If not, what relief the workman is entitled to?”

1. The reference dates back to 20.11.2003. The second party submitted the statement of claim Ex. 4 on 25.04.2004. The first party has appeared but failed to submit the written statement. On 10.03.2011, a notice Ex. 6 was sent to the second party to appear and to prosecute his case but to no result. Thus, it appears that the second party has not been willing to prosecute the case.

2. Therefore, the reference is disposed of in non-prosecution of the case by the second party with the observation as under: “the action of the management of Dena Bank, Rajkot in terminating the services of Shri Premji Vasram Bhalara is legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 997.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 63/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-12011/23/2015-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 11th April, 2017

**S.O. 997.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 63/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Indian Overseas Bank and their workmen, received by the Central Government on 11.04.2017.

[No. L-12011/23/2015-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
CHENNAI**

Tuesday, the 14<sup>th</sup> March, 2017

**Present : K.P. PRASANNA KUMARI, Presiding Officer**

**Industrial Dispute No. 63/2015**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Overseas Bank and their workman)

**BETWEEN :**

The President : 1<sup>st</sup> Party/Petitioner Union  
Indian Overseas Bank Employees Trade Union  
25, Rangoon Street, Thousand Lights  
Chennai-600002

**AND**

1. The Chairman : 2<sup>nd</sup> Party/1<sup>st</sup> Respondent  
Indian Overseas Bank, 763, Anna Salai  
Chennai-600002

2. The General Secretary  
All India Overseas Bank Employees Union  
No. 763, Mount Road  
Chennai-600002

**Appearance:**

- For the 1<sup>st</sup> Party/Petitioner Union : M/s. K.M. Ramesh, Advocates  
 For the 2<sup>nd</sup> Party/1<sup>st</sup> Respondent : M/s. T.S. Gopalan & Co., Advocates  
 For the 2<sup>nd</sup> Party/2<sup>nd</sup> Respondent : M/s. R. Munusamy & E. Prabhu, Advocates

**AWARD**

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/23/2015-IR(B-II) dated 13.05.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is :

*“Whether the action of the management of Indian Overseas Bank, Chennai regarding selection of Special Assistant in not giving preference for Graduates and candidates who have passed I & II of CAIIB is justifiable or not? If not so to what relief the workmen are entitled?”*

2. On receipt of Industrial Dispute this Tribunal has numbered it as ID 63/2015 and issued notices to both sides. Both sides entered appearance through their counsel and filed their Claim and Counter Statement respectively. The petitioner has filed rejoinder in answer to the Counter Statements filed by the Respondents.

3. The averments in the Claim Statement filed by the petitioner in brief are as below:

The petitioner is a registered union. The post of Special Assistant in the First Respondent Bank is usually given to Senior Clerical Staff in all nationalized banks. The Special Assistants are empowered to pass cheques upto a certain amount. The duties of Special Assistants are enumerated in the Bipartite Settlement. The work of Special Assistant is a Special Pay carrying post among Clerical Cadre. The previous settlements entered into between the Bank and the Recognized Unions led to corruption in the selection process of Special Assistant. The majority union was exercising undue influence with the Selection Committee. Marks for qualification and service are considered only to arrive at the position in the Seniority List to be selected as Special Assistants. The selection as Special Assistant is based on the performance of the candidate in the oral interview. Employees with high qualifications and experience failed in the interview, but persons with less qualification and experience were selected by the Bank at the behest of the majority union. Aggrieved by this, some of the staff members made representations to the bank for remedy. But this did not yield any result. Industrial Dispute is raised on account of this. A genuine selection process should be framed for the post of Special Assistant either based on seniority or by holding a written test. Before the Assistant Labour Commissioner (C) the First Respondent Bank has stated that the bank is intending to change the terms and conditions to make the selection process transparent. Subsequently a new settlement was entered into by the Bank with the majority union. However, the same clause of selection of Special Assistants by the method of interview were again incorporated in the settlement. The Seniority List is prepared by giving 5 marks for qualification and 1 mark for every year in service with a maximum of 30. Marks allotted for the interview is 65. A candidate has to obtain minimum 25 marks in the interview for selection eligibility. An employee aggrieved with the selection process had approached the Hon'ble High Court of Madras and the Writ Petition filed by him is still pending. During the interview held in the year 2011 the interview committee had manipulated the marks. A Writ Petition is pending regarding this also. In the last selection process the Regional Units of the Majority Union had released Special Assistants' Selection List even before the Bank Management announced the selection. The connivance of the Management with the Majority Union resulted in a scam in the appointment of messengers and a CBI enquiry is going on. Several of the Union Office Bearers are facing enquiry. The alleged settlement arrived at by the First Respondent with the majority union is arbitrary and unjustified. An Award may be passed holding that the action of the Bank in not giving preference to Graduates and candidates who have passed I & II of CAIIB is not justified and also directing the First Respondent to evolve a new scheme giving due weightage to qualification and experience of staff members for selection to the cadre of Special Assistants.

4. The First Respondent has filed Counter Statement contending as below:

The Petitioner Union is having less than 0.5% of the workmen employees of the First Respondent Bank as its members. So it has no representative character. It is not known whether the Petitioner Union was authorized in a manner known to law to take up issue mentioned in the order of reference and raise an Industrial Dispute. There is no valid Industrial Dispute. 90% of the workmen employees of the Bank are members of All India Overseas Bank Employees Union. Industry-wise settlement provides for Special Allowance to the employees in the Clerical cadre who are discharging duties of Special Assistants. The Bipartite Settlement of 1966 provided for Special Allowance to Special Assistants. The duties of Special Assistants involve some responsibilities and minor supervisory functions also. The Bank was free to select the Clerks who are to act as Special Assistants. The Bipartite Settlement of 1978 prescribed qualification to the Clerical Staff to become eligible for entrustment of Special Assistant duties. In the settlement of 1984 it was provided that suitability to act as Special Assistants will be determined by interview of senior employees

with weightage for qualification. The Clerks who are to perform the duties of Special Assistants should have a fair knowledge of banking practices and should have leadership quality and should be capable of showing initiative and should oversee the work of other Clerks under their control. It was for this reason suitability of the candidates for holding the post of Special Assistants was left to be assessed by personal interview. The practice of assessing suitability by interview has been in vogue for at least for 25 years before 2010. It was accordingly the Bipartite Settlement of 2010 agreed that the norms for suitability of Special Assistants shall be decided at the Bank level. It was decided that 5 marks will be given for qualification, 30 marks for service and 65 marks for interview. The post of Special Assistant is not a promotion. A clerk has no vested right to demand selection as Special Assistant. There is no justification for the apprehension of the petitioner that selection based on interview may result in nepotism and favoritism. The mode of selection was fixed as per the settlement made between the recognized union and the management. For this reason the dispute is not maintainable. All India Overseas Bank Employees Union should be impleaded as a party to the proceedings. Otherwise the dispute is bad for non-joinder of necessary parties. The petitioner is not entitled to any relief.

5. The All India Overseas Bank Employees Union has subsequently been impleaded in the proceedings as the Second Respondent. It has filed Counter Statement contending as below:

The Second Respondent is having membership of above 95% of the Award Staff working in Indian Overseas Bank. The Petitioner Union has only a very small number of staff as its members. So the Petitioner Union does not have representative character. So there is no valid Industrial Dispute also. Valid adjudication cannot be made on the basis of the reference. Suitability for Special Assistants are determined by the Bank by interview of senior employees with due weightage for their qualification and seniority. Selection to the post is made on the basis of the settlement reached between the management and the second respondent union on 03.07.2014. The allegation that selection by interview led to corruption in the selection process is only imagination and far from truth. It is incorrect to state that the Union exercised undue influence with the Selection Committee. The Special Assistants should have fair knowledge of banking practices and should have leadership quality. It is for this reason the suitability for the post of Special Assistants was decided to be assessed by personal interview. This mode of selection is prevalent in many banks including nationalized banks. The petitioner is not entitled to any relief.

6. The petitioner has filed rejoinder denying the allegations made in the two Counter Statements and reiterating its case in the Claim Statement.

7. The evidence consists of oral evidence of MW1 and documents marked as Ext.W1 to Ext.W16 and Ext.M1 to Ext.M7.

8. **The points for consideration are:**

- (i) Whether the process adopted by the First Respondent for selection of Special Assistants is proper and justified?
- (ii) What if any is the relief to which the petitioner is entitled?

#### **The Points**

9. The Petitioner Union has raised the dispute questioning the method by which the Indian Overseas Bank, the First Respondent has been selecting Special Assistants for the Banks. The method of selection is by interview from the Senior Clerks of the Bank. Initially a Seniority List will be prepared taking into account qualification as well. One mark is given for service of each year with maximum 30 marks and 5 marks is given for qualifications as well. The remaining 65 marks is for interview. The grievance of the petitioner is that this method of selection has resulted in nepotism and favouritism. It is alleged that the recognized union is in hand in glove with the officials of the Bank and they were influencing the selection process and because of this several employees in the Clerical Cadre who are actually entitled to and should have been selected as Special Assistants have been denied selection. The post of Special Assistants though in the Clerical Cadre itself carries with it Special Pay and some sort of supervisory capacity also which makes it precious. According to the petitioner, selection to the Special Assistant post should be based on seniority alone or on the basis of a written test. The case of the First Respondent is that as the post of Special Assistant requires some supervisory capacity as well it is not advisable to have the selection on the basis of seniority alone but based on an interview by which the Bank can select suitable employees having necessary capacity for supervision and control of those others in the Clerical Cadre working with them. It is also the case of the First Respondent that the Petitioner Union has only 0.5% membership among the employees of the Bank and the Bank has already entered into a settlement with the recognized union which is a majority union having 95% membership and for this reason also the petitioner cannot challenge the method of selection. According to the First Respondent what is good and acceptable to the majority must be so for the miniscule minority also. The All India Indian Overseas Bank Employees Union which is the recognized union and has been subsequently impleaded has also raised similar contentions.

10. Before going into the merits of the case it is to be seen whether the contention raised on behalf of the First Respondent that the petitioner has no locus-standi to raise the dispute has any justification. The counsel for the First Respondent has referred to the decision in *NEWSPAPERS LTD. VS. STATE INDUSTRIAL TRIBUNAL, UP AND OTHERS* reported in AIR 1957 SC 532 and reminded that in spite of the Government making a reference under ID Act in the exercise of its administrative powers it is not destructive of the rights of an aggrieved party to show that what was referred was not an Industrial Dispute at all and the jurisdiction of the Tribunal to make a Award can be questioned.

11. There cannot be dispute about the legal proposition advanced on behalf of the First Respondent with reference the case of *Newspapers Ltd.* Now it is to be seen whether the petitioner has no locus-standi to raise the dispute and therefore this Tribunal cannot adjudicate the dispute. The reason given by the Respondents to contend that the petitioner has no locus-standi to raise the dispute is that it is a union which is having only a small workmen of the First Respondent as its members. The membership of the union among the bank employees, it is stated, is only 0.5%. However, can it be stated that the petitioner is not entitled to raise the dispute merely for this reason? The Apex Court has stated in very many cases that even a minority union can raise a dispute. This position has been held in the decision reported in *TATA CHEMICALS LTD. VS. WORKMEN* reported in 1978 3 SC 42 and has been reiterated in subsequent decisions. So merely because it is a minority union the petitioner does not lose its right to raise the dispute. It is a registered Trade Union and has got locus-standi to raise the dispute.

12. The First Respondent has contended that the practice of selecting Special Assistants by the Management by interview has been in vogue for several years prior to 2010 and subsequently this practice has been made a part of the settlement entered into with the recognized unions. It was while the settlement dated 27.04.2010 was in operation the dispute has been raised. Subsequently, a settlement was entered into on 03.07.2014 (Ext.M2). The same process of selection was incorporated in this settlement as well. This settlement is to be in operation till 02.07.2017. According to the Respondents for this reason also the petitioner cannot continue the dispute. The petitioner is bound to accept the terms of the settlement, it is argued on behalf of the First Respondent.

13. The counsel for the First Respondent has referred to the decision in *AMALGAMATED COFFEE ESTATE AND THEIR WORKMEN AND OTHERS* reported in 1965 2 LLJ 110 to advance his case that once a settlement is entered into it should be accepted. In the above case, an Award was passed and appeal against the same has been pending. In the meanwhile the dispute had been compromised and an application has been filed to dispose the appeal in terms of the settlement. This was accepted and Award has been passed as per the settlement. However, in this case the parties to the dispute as well as the settlement are the same unlike in the present case where a different union (party) is pursuing the dispute. The decision in *SIRSILK LTD. AND ANOTHER AND GOVERNMENT OF ANDHRA PRADESH AND ANOTHER* reported in 1953 2 LLJ 647 was a case where Award was passed and was pending publication and a settlement was arrived at in the meanwhile. It has been held by the Apex Court that the proper procedure would be to withhold publication of the Award. Here also the parties to the Award have entered into the settlement.

14. The counsel for the First Respondent has argued that if a settlement is acceptable to a vast majority of 95% of the employees who are members of the Second Respondent it must be acceptable to the few members of the petitioner union as well. The counsel has referred to the decision in *TATA ENGINEERING AND LOCOMOTIVE COMPANY LTD. VS. THEIR WORKMEN* reported in 1981 4 SCC 627. Here it has been held that if a settlement had been arrived at by a vast majority of the concerned workers with their eyes open and was also accepted by them in its totality it must be presumed to be just and fair and not liable to be ignored while deciding the reference merely because a small number of workers were not parties to it or refused to accept it or because the Tribunal was of the opinion that the workers deserve marginally higher emoluments than they themselves thought they did. Reference was also made to the decision in *HERBERTSONS LTD. VS. WORKERS OF HERBERTSONS LTD.* reported in 1975 4 SCC 736 in this respect. Here it was held that it is not possible to scan a settlement in bits and pieces and hold some portions good and acceptable and others bad. However, it comes with an exception that the objectionable portion should not completely outweigh the other advantages gained. Even in the case of *Amalgamated Coffee Estate* referred to earlier the question whether the settlement entered into subsequently is a fair one was considered.

15. In the present case the petitioner is not questioning the settlement. The dispute is regarding the process of selection adopted by the Bank pointing out the danger involved in the same. As could be seen from the Claim Statement, while the matter was pending before the Labour Commissioner, the First Respondent seems to have taken a stand that it is thinking of evolving a new selection process. However, another settlement was entered into in the meanwhile, accepting the same procedure which was earlier entered into for selection. So the question is not whether the settlement entered into by the majority union is a proper one or not but only whether the selection process is detrimental to the interests of the staff and will result in deprivation of the benefit to some of the staff who are really and rightly entitled to it. Merely because the settlement was accepted by the majority union it need not be accepted. It need not be converted into a Award under Section-12(3) of the Act also as requested in the Counter Statement. Before

resorting to such procedure it is to be seen whether there is justification in the case advanced by the petitioner that the staff are affected by the procedure.

16. What is the process for selection as Special Assistant resorted to by the Bank? It gives one mark for each completed year of service in the Bank with maximum of 30 marks. For Graduation/Post Graduation two marks are given. One mark is for CAIIB Part-I and two marks for CAIIB Part-II. Thus one gets 5 marks for qualification and maximum 30 marks for service making a total of 35. The remaining 65 marks out of 100 are set apart for interview. The Seniority List will be prepared based on the marks obtained on the basis of service and qualification. Out of this, persons will be called for interview in the ratio of 1:2. The selection procedure is provided in Ext.W2, the settlement dated 04.07.2014.

17. What would happen if selection for Special Assistants is based on interview only? If a person is to be selected in the interview one should secure at least 25 marks. It is possible that even if a person is on the top of the Seniority List he will not get selected if he fails to secure this minimum 25 marks. Even assuming that a person is getting more marks than 25 and is included in the list of selection he need not be given posting as Special Assistant if he is not senior-most and more persons who are below him in the seniority list are getting more marks in the interview. This might happen even if the interview is held in a proper and just manner.

18. The case of the petitioner is that several of the staff are deprived of the benefit of getting selected as Special Assistant as the Management has not been conducting interview in the proper manner. It is alleged that the Selection Committee is influenced by the Second Respondent, which is the recognized union having majority of membership in the Bank. Those who are not qualified also are said to be getting selected. The Claim Statement has referred to certain proceedings pending before the High Court of Madras, by persons aggrieved by the selection process. There is no doubt that giving undue power to the Management to grant 65 marks for interview alone and making it possible for them to have an arbitrary hand in the process of selection will result give a chance to favoritism and nepotism. The Claim Statement has referred to the observation made by the High Court regarding the unethical relationship by the majority union and the bank. The High Court has stated “the learned Public Prosecutor during the course of arguments submitted that the unions/associations of the bank especially in Indian Overseas Bank are so strong that the Management effect transfer only in consultation with the Office Bearers of the Union/Association and even an Assistant General secretary of the Staff Union in the Region who would be in the category of the Clerk have influence over the Branch Managers and Regional Managers besides exercising control over the staff that in some places staffs are posted at the discretion of the Assistant General Secretary”. The petitioner has also referred to the scam of the First Respondent Bank involving several union secretaries and officials of the bank. This Tribunal itself had occasion to deal with several cases where unqualified hands without experience had been taken in as Sweepers and Messengers on the basis of the false certificates given by the Bank Managers under the influence of the Office Bearers of the majority union which wielded such strong power. It is not without basis that apprehension is raised by the Petitioner Union. When such practice is resorted to one can only imagine the result of an interview in which 65% marks are to be awarded out of the total 100. This 65% is in fact to be considered as 100% itself. Once a person in the Clerical Cadre enters the Seniority List it is on the Committee who conducts the interview to decide whether the person is to be selected as Special Assistant or not. Thus the process gives an undue hand to the Committee for interview and thus the Management.

19. The process of selection awarding majority of marks for interview has been deprecated by the Apex Court. The counsel for the petitioner has referred to the decision in *AJAY HASIA AND OTHERS VS. KHALID MUJEEB SEHRAVARDI AND OTHERS* reported in 1981 1 LLJ 103 in this respect. The Apex Court has held in this that allocation of more than 50% of the total marks for the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid. It was also observed that if the marks for interview do not exceed 15% of the total marks and the candidates are properly interviewed and relevant questions are asked with a view to assessing the suitability with reference to the factors required to be taken into consideration the oral interview would satisfy the criteria of reasonableness and not arbitrariness. The above of course was a case for selection for admission to the Regional Engineering College. However, the proposition laid down by the Apex Court is relevant in cases similar to the present one also. So a process of selection of Special Assistants which is more staff-friendly and devoid of complaints is required.

20. What is the procedure that can be adopted for the process of selection? According to the petitioner it should be based on seniority alone or based on the result of a written test. However, if it is entirely based on seniority it will be difficult to assess the capacity of the concerned person to be selected regarding his supervisory capacity. So also it will not be possible to decide the competence otherwise of the person to sit in the post. This would be the case if it is on the basis of a written test also.

21. The petitioner has produced the settlements incorporating selection procedure accepted by the Andhra Bank and Indian Bank for the post of Special Assistants. As per Ext.W7, the one in respect of Indian Bank the post would be offered to candidates who have put in 20 years of Clerical Service as on the relevant date if an application in response

to the circular to be issued is made. As per Ext.W6, the settlement of Andhra Bank 3 marks are to be given for each completed year of service subject to a maximum of 60 marks. Maximum 20 marks are to be given for educational qualification. 8 marks are for Graduation, 2 marks for Post Graduation and 5 marks each for CAIIB Part I and II. 20 marks are set apart for interview. This is a settlement entered into under Section-12(3) of the ID Act before the Assistant Labour Commissioner, Hyderabad. On a comparison of the procedure adopted by the Indian Bank and Andhra Bank it could be seen that the one adopted by the Andhra Bank is a better and reliable one. For Indian Bank it is on the basis of seniority alone. This does not take into consideration the supervisory capacity of the staff to be selected. However, in the case of Andhra Bank this also can be given due weight while interviewing the candidate. So I propose to accept the same procedure adopted by the Andhra Bank for the process of selection as Special Assistant in the First Respondent Bank.

22. On the basis of the above discussion an Award is passed as below:

The process for selection as Special Assistants in the Indian Overseas Bank shall be as below:

All Clerical Staff who have completed 5 years of service in Clerical Cadre as on the date of notification for selection to the post of Special Assistant shall be entitled to apply for the post.

The candidates who have responded to the notification and who fulfill the eligibility criteria shall be arranged in the order of their seniority and shall be called for interview in the ratio of 1:3.

The employees who appear for the interview shall be selected as per the rank obtained on the basis of aggregate marks computed as below:

a.	Service	-	3 marks for each completed years of service subject to a maximum of 60 marks
b.	Educational Qualification		
	Graduation	-	8 marks
	Post Graduation	-	2 marks
	CAIIB Part-I	-	5 marks
	CAIIB Part-II		5 marks
	Total		20 marks
c.	Interview	-	20 marks
	Grand Total		100

R1 is directed to select Special Assistants by the above process.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 14<sup>th</sup> March, 2017).

K. P. PRASANNA KUMARI, Presiding Officer

**Witnesses Examined:**

For the 1 <sup>st</sup> Party/Petitioner	:	None
For the 2 <sup>nd</sup> Party/1 <sup>st</sup> Management	:	MW1, Sri R. Parthasarathy
For the 2 <sup>nd</sup> Party/2 <sup>nd</sup> Management	:	None

**Documents Marked :**

**On the petitioner's side**

Ex.No.	Date	Description
Ext.W1	23.10.2002	Copy of Special Assistant Selection Settlement arrived at in the Respondent Bank
Ext.W2	04.07.2014	Copy of Special Assistant Selection Settlement arrived at in the Respondent Bank
Ext.W3	10.11.2014	Copy of letter from Respondent Bank to Assistant Labour Commissioner



Ext.W4	19.12.2014	Copy of letter from Respondent Bank to Assistant Labour Commissioner
Ext.W5	17.03.2012	Copy of Central Office Circular issued by the Respondent Bank regarding selection of Special Assistants
Ext.W6	29.05.1999	Copy of Special Assistant Selection Procedure Settlement in Andhra Bank
Ext.W7	26.02.2010	Copy of Special Assistant Selection Procedure Settlement and promotion in Indian Bank
Ext.W8	23.10.2015	Copy of Information obtained under Right to Information Act regarding Selection of Special Assistant in Respondent Bank for the year 2012
Ext.W9	18.10.2012	Copy of order passed by the Hon'ble Madras High Court in WP No. 17584 of 2011
Ext.W10	29.04.2011	Copy of manipulated mark list of interview in the Respondent Bank
Ext.W11	19.05.2012	Copy of representation from Ms. Santha Augustine regarding her non-selection of Special Assistant
Ext.W12	16.05.2012	Copy of representation from Mr. R. Chandrasekhar with enclosures regarding his non-selection of Special Assistant
Ext.W13	21.05.2012	Copy of representation from Mr. R. Ajith Kumar regarding his non-selection of Special Assistant
Ext.W14	19.05.2012	Copy of representation from Ms. D. Keerthy regarding her non-selection of Special Assistant
Ext.W15	19.05.2012	Copy of representation from Mr. M. Devaraj regarding his non-selection of Special Assistant
Ext.W16	11.12.2012	Copy of extract from the judgment in CC No. 12/ passed by XI Additional Special Judge for CBI Cases, Chennai

**On the Management's side**

Ex.No.	Date	Description
Ext.M1	05.10.1964	Code of Discipline – between the Management of Indian Overseas Bank and the All India Overseas Bank Employees' Union
Ext.M2	03.07.2014	Settlement between the Respondent (IOB) and the All India Overseas Bank Employees' Union under Section 18(1) of the Industrial Disputes Act
Ext.M3	-	Statement of particulars of total number of Clerical Staff in IOB, Number of Members of AIBEU, Number of Clerical Staff with S.A. Duties, Number of Members of IOBETU and Number of IOBETO Members who are entrusted with S.A. Duties
Ext.M4	-	Assignment of Special Assistants Duty
Ext.M5	12.03.2012	Minutes of discussion between R1 and R2
Ext.M6	02.12.1985	Memorandum of Settlement between R1 and R2
Ext.M7	13.09.1990	Memorandum of Settlement between R1 and R2.

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 998.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ सं. 29/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-12011/78/2012-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 11th April, 2017

**S.O. 998.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure in the Industrial Dispute between the management of Syndicate Bank and their workmen, received by the Central Government on 11.04.2017.

[No. L-12011/78/2012-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

**BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI-110032**

**I.D. No. 29/2013**

Sh. Prabal Pratap Singh, Vice President,  
C/o Bhartiya Mazdoor Sangh, 2 Naveen Market,  
Kanpur,(U.P.)

#### **Versus**

Dy. General Manager,  
Syndicate Bank Regional Office,  
R-1/77 , Ist Floor, Raj Nagar,  
Ghaziabad (U.P.)

#### **Ex-parte Award**

The Central Government in the Ministry of Labour vide Letter No.L-12011/78/2012 (IR(B-II)) dated 08.03.2013 referred the following Industrial Dispute to this Tribunal for adjudication :—

“Whether the action of the management of Syndicate Bank, R.O. Ghaziabad in exempting the 10 employees from general transfer norms mentioned in H.O. Circular no. 36/2006 dated 04.03.2006 amounts to unfair labour practice? What relief workman is entitled to ?

On 23.04.2013 reference was received in this Tribunal. Which was register as I.D No. 29/2013 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 28.05.2013 claim statement has been filed by workman. Through which workman prayed as follows:-

“Chapter –V-C section 25 T of Industrial Dispute Act says no employer or workman or trade union whether registered under Trade Union Act 1926 (16 of 1926) or not shall commit any unfair labour practice. Regional Head of Syndicate Bank RO. Ghaziabad has committed an unfair labour practice in implementing the General Transfer Process -2011 for their workmen by violating the H.O Transfer norms .Hence under Chapter V-C section 25 U of ID. Act 1947. Penalty should be imposed on Regional Head of Syndicate Bank Ghaziabad Region and innocent employees should be paid halting Allowances from the date of their reliving till they had worked in transferee Branch. Sir, it is humble request.”

Against Claim statement management filed its written statement on 16.07.2013. Where-in management prayed as follows:-

“Management denied the allegations of workman and prayed for dismissal of claim statement.”

Workman filed rejoinder on 19.09.2013. Where-in he re-affirmed the contents of claim statement .

On 15.05.2014 following issues were framed:-

1. Whether the action of the management of Syndicate Bank, R.O. Ghaziabad in exempting the 10 employees from general transfer norms mentioned in H.O. Circular No. 36/2006 dated 04.03.2006 amounts to unfair labour Practice? If so its effect?
2. To what relief the workman are entitled to ?

And fixed 10.07.2014 for workman evidence.

Several opportunities given to workman to adduce his evidence but he failed to adduce his evidence. Hence his evidence has been closed on 5.11.2015 and case was fixed for management evidence/ arguments.

Management in support of its case adduced MW1 Sh. Pramod Kumar Upadhaya, who tendered his affidavit none came on behalf of workman to cross-examined him.

Hence his testimony is un rebutted. Hence come in reliable and credible evidence.

Thereafter Ld. A/R for the management closed remaining evidence of management.

I have heard the Ld. A/R for the management only as case proceeded ex-parte against workman.

My issue wise findings is as follows:-

#### **Finding on issue no. 1**

Burden to prove issue No. 1 lies on workman but in the instant case workman adduced his no evidence. Rather management adduced MW1 Sh. Pramod Kumar Upadhyay in support of its pleadings in written statement. So issue no. 1 is liable to be decided against workman and in favour of workman. Which is accordingly decided.

Evidence on issue no. 2 this issue is relating to relief of workman but in the instant case workman could not produce any evidence to prove issue no. 1 due to which issue no. 1 has already been decided in favour of management and against workman. Due to which issue no. 2 is also liable to be decided in favour of management and against workman.

Which is accordingly decided.

In these circumstances reference is liable to be decided in favour of management and against workman. Which is accordingly decided and claim statement is dismissed. Award is accordingly passed.

Dated:-23.2.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 999.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 44/07) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-12012/47/2002-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 11th April, 2017

**S.O. 999.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/07) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 11.04.2017.

[No. L-12012/47/2002-IR (B-II)]

RAVI KUMAR, Desk Officer

#### **ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,  
JABALPUR**

**NO. CGIT/LC/R/44/07**

Shri Gopal Makwana,  
S/o Shri Kanhaiyalalji Makwana,  
Ghanji Bai ka Nahara,  
House No.11, Ratlam,  
M.P.

...Workman

**Versus**

Deputy General Manager,  
Bank of India, Zonal Office,  
18, Shanku Marg,  
Freeganj, Ujjain,  
MP

...Management

### AWARD

Passed on this 27<sup>th</sup> day of February, 2017

1. As per letter dated 11-6-2007 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/47/2002-IR(B-II). The dispute under reference relates to:

“Whether the claim of Shri Gopal Makwana, S/o Shri Kanhaiyalalji working as temporary peon that he had worked for more than 240 days in a calendar year before his alleged termination w.e.f. 21-7-01 is justified? If yes, whether the action of the management in terminating his services w.e.f. 21-7-2001 is legal and just? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Case of Ist party workman submitted statement of claim at Page 2/1 to 2/8. Case of Ist party workman is that he was appointed as peon in Ratlam branch of 2<sup>nd</sup> party but appointment order in writing was not given to him. He was paid monthly wages. His signatures were obtained on plain register without writing his name. Branch Manager was withdrawing amount and payment was made to him. He was working in Ratlam branch from July 89 to June 94 continuously. His wages were paid in piece meal from different heads. Record relating to payment is in custody of the Bank. New branch was opened in Mandsor on 17-2-97. Ist party workman was called back and he was engaged for sweeping cleaning branch. He was also opening the branch and performing work of distribution of letters and taking vouchers and files to the concerned tables. Peon was not appointed in Mandsour branch. Workman was engaged for such work was paid Rs.700 per month obtaining his signatures on the vouchers. In absence of regular appointment, work was taken from casual labours. Work of Daftary was also taken from him. He was paid Rs.91 for said work. Payment was made to the Ist party workman under voucher. He was continuously working in Mandsour branch till 21-7-01. Management has not included his name in muster roll. His attendance was maintained on plain copy, on its basis payment was made. That he was working with Bank at Ratlam branch from 1989 to 1994 and Mandsour branch from 1997 to 2001. During each of the years, he completed more than 240 days continuous service. He was never absent from duty in the Bank. Management adopted unfair labour practices and not taken notice about his working entire record is in custody of the Bank. That Branch Manager Mandsour branch had recommended for his regular appointment/ regularization vide letter dated 4-4-97, 17-10-98, 30-10-98. Workman had submitted application on 23-2-97. That workman was working with confidence with the Branch Manager handling work of huge monetary transaction of Rs.20 Lakh under letter dated 8-10-99. He was also handling work of filing cabinet as per letter dated 7-3-00, 5-6-00. Valuable stationery was called to him under letter dated 31-12-00, 1-1-01. Workman reiterates that he was continuously working more than 240 days. He submitted applications dated 8-5-99, 19-7-99 requesting for regularising his services. That his services were terminated without notice from 21-7-01 instead of regularizing his services after termination of his service, he is unemployed. He was not paid retrenchment compensation prior to termination of his service. After dispute raised by him, Government refused to make reference on 3-7-02. Ist party workman filed Writ Petition No. 62/02 as per directions given by Hon'ble High Court. Vide letter dated 30-7-02, the dispute has been referred. Ist party workman has reiterated his services. He was continuously working in the Bank from 1989 to 1994 in Ratlam branch, in Mandsour branch from 1997 to 2001. He completed more than 240 days in each of the year. Termination of his services without notice and payment of retrenchment compensation is illegal. Action of the management amounts to unfair labour practice. On such ground, workman prays for his reinstatement with backwages. Incidentally workman has also pleaded that he has not paid scale wages.

3. 2<sup>nd</sup> party filed Written Statement opposing claim of workman. 2<sup>nd</sup> party contends that the dispute is raised by workman challenging termination of his service from 21-7-01. Workman was not appointed by Bank. Shri Ram Nagwanshi who represent Ist party workman is not holding authorization he has no locus to represent Ist party before this Tribunal. Workman has not produced prima facie evidence about he rendered continuous service under Section 25 B of ID Act. The reference is not tenable. Appropriate Government had refused to make reference. Only after direction in Writ Petition No. 1962/02, the dispute has been referred. It is reiterated that there is no employer employee relationship between parties. Ist party is not covered as workman under Section -2(s) of ID Act. Claim of workman pertaining to his retrenchment is contrary to the provisions of ID Act. 2<sup>nd</sup> party reiterates that the Bank has statutory rules and regulations for appointment of his staff. As per recruitment policy, Bank has to follow reservation for SC ST OBC candidates. Besides eligibility and candidates sponsored through Employment Exchange., Ist party workman was not appointed following the rules and regulations. His name was not sponsored through Employment Exchange. Bank is required not only notifying the vacancies but filling the post from candidates sponsored through Employment

Exchange. Casual labours engaged by Branch Manager considering increase in work or regular employee on leave doesnot give casual labour right for regularisation in service. That claim of Ist party pertains to disengagement of casual engagement. Ist party workman was engaged temporarily on daily wage, he has not produced experience certificate issued by the Bank. In Para 18 of the Written Statement, 2<sup>nd</sup> party has shown working days of workman 172 days in 1997, 189 days in 1998, 194 days in 1999, 139 days in 2000 & 161 days in 2001. Workman has not completed 240 days continuous service is not covered as employee under Section 25 B of ID Act. Above contentions are reiterated. Ist party was not appointed as peon in Ratlam branch. In his application before ALC, Ist party has not contented he had not worked more than 240 days during July 89 to June 94. Ist party workman was never engaged for more than 240 days during any year. There is no need to produce payment voucher claimed by Ist party. 2<sup>nd</sup> party denies that work of Daftary was extracted from him. That claim of Ist party if allowed would be violative of Article 4 & 16 of the constitution resulting in back door entry in service of the Bank. It is reiterated that workman was not appointed by Bank. There is no question of termination of his service. Claimant was doing unskilled work for which labours easily available in the local market was availed. Ist party was paid remuneration considering quantity of the job done by him. Rest all adverse contentions of workman have been denied. It claim of workman is allowed, it will cause injustice on employees waiting for a change in Bank's service. 2<sup>nd</sup> party prays that reference be answered in its favour.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether workman Shri Gopal Makwana, S/o Shri Kanhaiyalalji working as temporary peon had worked for more than 240 days in a calendar year before his alleged termination w.e.f. 21-7-01?	In Negative
(ii) Whether termination of services of Ist party workman w.e.f. 21-7-01 is legal and justified?	In Affirmative
(iii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

#### REASONS

5. The term of reference pertains to whether workman completed more than 240 days continuous service preceding 12 months of his termination w.e.f. 21-7-01.

6. Ist party workman filed affidavit of his evidence supporting his claim. In his affidavit of evidence, he has stated that he was engaged in Ratlam branch of the Bank from 1-7-89 to June 94. He was engaged in Mandsour branch from 17-2-97 to 24-7-01. He was working as sweeper in Mandsour branch. He was paid Rs.700 pm which was increased to Rs.800 pm. He was doing work of distributing lette4rs, making bundles of notes and stitching it, moving files and vouchers from one table to other table and other details of work performed by him. That he worked more than 240 days during each of the year during period 17-2-97 to 24-7-01. From his evidence, documents Exhibit W-1 to W-14 are admitted in evidence. Exhibit M-1 is also admitted in evidence. Ist party workman in his cross says Branch Manager Mahendra Singh engaged on 7-2-97. He was called to the branch on telephone. Branch Manager was acquainted with him. Prior to it, he was working in Ratlam branch, he was called for work in Mandsour branch after its opening. Post was not advertised, his name was not sent through Employment Exchange. One post was vacant in Mandsour branch. There were 7-8 regular post at Ratlam branch. Ist party workman claimed ignorance whether his name was sponsored through Employment Exchange office. He was engaged on daily wages. He was paid Rs.91 per day. Ist party workman in his further cross says for initial 2 years, he was paid Rs.700 pm. After 2 years, he was paid Rs.800 pm. He was engaged on monthly basis and thereafter on daily wages. That he produced 19 document in support of his claim. Letters given by Branch Manager, certificate issued to him for issuing stationary and DDs etc. Branch Manager was inclined for his regular appointment. Character certificate was given to him. Workman was unable to tell number of his working days in any month. Pramod Agrawal was working at Mandsour branch between 2000 to 2001. He raised dispute before ALC, Bhopal. In 2<sup>nd</sup> spell of cross examination, workman says his first appointment in February 1997 was in Mandsour branch. He submitted written application to Branch Manager. Post was not advertised. Written appointment letter was not given to him. For work of cleaning, sweeping, he was engaged on monthly basis. When other employees were on leave, he was engaged on daily wages. He was initially paid Rs.700 pm which was increased to Rs.800 pm. He was working from 7 AM to 11 AM. Even after starting of bank hours, work of sweeping, cleaning was carried by him. Area of Mandsour branch is 1700 sq.ft. There was bathroom and latrine in Mandsour branch. He was not taking leave in cleaning, sweeping work. He was paid under voucher. Branch Manager was drawing amount under payment voucher. Branch Manager Mahendra Singh was working in the branch. Workman claims ignorance about his present posting. That in 2000-01, he had not submitted any application. The entries in Exhibit W-3 are written in his handwriting. While

he was working in Bank, other peon was working. Regular peon was not doing work of distribution of letters. Sometime regular peon used to do said work. Original of Exhibit W-13 is not with him. Exhibit W-1 was given to him by Mahendra Singh. Application Exhibit W-2 was given to him by Mahendra Singh in 1997. He was told by Mahendra Singh that application would be forwarded to General Manager. That Exhibit W-3 and W-4 were given to him by Mahendra Singh telling him that early decision would be taken. Mahendra Singh was working as Branch Manager at Mandsour branch at Mandsour branch during 1997 to 2000. Exhibit W-6 was handed over to him around the year 2000. Exhibit W-7 to W-12 were given to him by different Branch Managers. Workman corrected that Mahendra Singh had given him those documents around year 2000-01. That he produced documents about his working days. Bank did not issue him experience certificate. He was maintaining entries about his working days. The documents are produced on record. Since termination of his service in 2000, he is not in employment. In entire cross-examination of workman, no suggestion was given that workman had not worked for 240 days preceding termination of his service.

7. Management filed affidavit of Mahendra Singh supporting whole contentions in Written Statement filed by management. That Ist party was engaged in Ratlam branch in during 1988 to 1991. He was engaged in Mandsour branch from February 97 to June 2009. That claimant was not appointed by him. As Branch Manager, he is not authorized to appoint anyone in Bank against permanent vacancy. The working days referred in Para 18 of Written Statement are also stated in para 10 of Written Statement. Lastly management's witness stated that workman was not engaged for 240 days in any calendar year. From evidence of management's witness, documents Exhibit M-1 to 7 are admitted in evidence. Management's witness in his cross says he was acquainted with claim. He was engaged as casual labour. That during 97 to 2000, he was posted in Mansour branch. While engaging claimants as casual labour, rules were followed. In the year 2011, management's witness has taken voluntary retirement. Thereafter he did not visit Mandsour branch. He claims ignorance about area of Mandsour branch. One post of sub staff was sanctioned for Mandsour branch. When Mandsour branch was opened only Ist party workman was working in it. Permission as not taken from higher office to engage him in the branch. He did not remember the rates of wages paid to claimant, post of part time sweeper was not sanctioned in Mandsour branch. Workman was doing work of sweeping, cleaning, distribution of letters. He claims ignorance whether Ist party workman was sent to Ujjain for distribution of letters. Workman was paid Rs.700 pm. He claims ignorance whether the amount was increased to Rs.800 pm. He did not recollect whether after transfer of Prahlad Singh, workman was paid Rs.51 per day. He claims ignorance whether retrenchment notice was issued to workman or retrenchment compensation was paid to him.

8. Documents produced by workman Exhibit W-1, 1-A are order of reference and copy of Government refusing to make reference. Exhibit W-2 is order passed by Hon'ble High Court directing Government to make reference. The documents produced on record shows letter dated 4-4-97. Branch Manager had recommended for regular appointment. The claimant had submitted application dated 23-2-97. Branch Manager issued letter dated 3-6-98 recommending early appointment of sub staff that workman was engaged in the branch as casual labor paid Rs.700-800 pm. Similar letter is also issued by Branch Manager on 17-10-98, 30-10-98, 19-2-2000 requesting early appointment. Exhibit W-6 to 11 pertains to workman was entrusted work for payment of Rs.20 Lakh by cheque and credit notes receiving stationary and confidential documents. Payment by cheque receiving stationary during the year 1999, 2000, 2001. Exhibit W-13 produced by workman pertains to entries of peon delivery book, entries are in names of different persons receiving the items sent to them. Entries are for the period 3-3-97 to 10-11-2000. In Exhibit M-1 application to AL submitted by workman, his working days are shown 72 days in 1997, 186 days in 1998, 164 days in 2000., 136 days in 2001. He worked for 570 days in Mandsour branch. From documents Exhibit M-1, application submitted to ALC, Bhopal, it is clear that workman had not completed 240 days continuous service preceding 2 months of termination of his service 21-7-01. So far as document Exhibit M-2 to M-7 are copies of circulars issued by Bank regarding recruitment of sub staff. As workman himself has given his working days in Exhibit M-1 are less than 240 days in any of the year, I record my finding in Point No.1 in Negative.

9. Point No.2- In view of my finding in Point No.1 Ist party workman has failed to establish he worked more than 240 days preceding 12 months of his termination from 21-7-0, Ist party is not covered as employee under Section 25 B, he is not entitled to protection under Section 25-F of ID Act. So far as claim of Ist party workman pertaining to denial of regularization, said claim is not included in terms of reference and therefore it is not appropriate for me to deal with the aspect of the claim. For the reasons discussed above, workman is not entitled to protection of Section 25-F of ID Act. The action of the management is not violative of Section 25-F of ID Act, action of the management is legal.

10. Learned counsel for management Shri A.K.Shashi relies on ratio held in case between Bank of Baroda, Kota versus Presiding Officer, CGIT Cum Labour Court, Kota and another reported in 2011-I-LLJ-462(Raj), Oshiar Prasad and others versus employers in relation to management of Sudamdih Coal Washery of BCCL, Dhanbad reported in 2015-I-LLJ-513(SC), unreported judgment in case between workmen Rashtriya Colliery Mazdoor Sangh versus Bharat Coking Coal Ltd and another in IA No.2 of 2016, case between Suresh Kumar Verma versus State of MP and others reported in 2012(134)FLR-904. The detailed discussion is not required. For reasons discussed above, Point No.2 is answered in Affirmative.

11. In the result, award is passed as under:-

- (1) The workman has failed to establish he worked more than 240 days in a calendar year preceding his termination w.e.f. 21-7-01.
- (2) Termination of services of workman from 21-7-01 is not proved for violation of Section 25-F of ID Act and as such illegal.
- (3) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 1000.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 38/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-12012/26/2008-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 11th April, 2017

**S.O. 1000.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2008) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 11.04.2017.

[No. L-12012/26/2008-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

**PRESENT : M.V. DESHPANDE**, Presiding Officer

#### **REFERENCE NO. CGIT-2/38 of 2008**

EMPLOYERS IN RELATION TO THE MANAGEMENT OF  
BANK OF INDIA

The General Manager,  
Bank of India,  
Mumbai South Zone, IR Deptt., 70-80,  
Bank of India Building, 2<sup>nd</sup> Floor, M.G. Road,  
Fort, Mumbai – 400 001

**AND**

THEIR WORKMAN

Shri Ramesh P. Ahire,  
Bank of India Quarters, C-77, 3<sup>rd</sup> Floor,  
Shri Krishna Nagar,  
Borivili [E],  
Mumbai – 400 066

#### **APPEARANCES:**

FOR THE EMPLOYER : Mr. L. L. D'souza, Advocate

FOR THE WORKMAN : Mr. M. B. Anchan, Advocate

Mumbai, dated the 15<sup>th</sup> February, 2017

**AWARD PART - I**

1. Government of India, Ministry of Labour & Employment vide its order No. L-12012/26/2008 – IR (B-II) dated 11.06.2008 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this tribunal for adjudication.

“Whether the action of the management of Bank of India, Mumbai South Zone, Mumbai by awarding the Dismissal to Shri Ramesh P. Ahire from the Bank services is justified ? If not, to what relief the workman Shri Ramesh P. Ahire is entitled to ?”

2. After the receipt of the reference, notices were issued to both parties. In response to the notice, second party workmen filed his statement of claim Ex.9. According to the second party workman, he was working as Hamal-cum-Sweeper at bank Stationery Cell, Zonal Office, South Mumbai Zone. He was served with charge sheet dated 6.9.2006 for the alleged misconduct of over drawing Rs.1,99,952/- from his ATM Card bearing No. 4052 3800 3000 5594. He was regular and permanent employee of Bank of India, Mahim Branch. On his confirmation in the service he was provided with above ATM card by the bank and he was also sanctioned O.D. facility of Rs. Two lakhs to meet his contingent expenses. While he was given ATM card and O.D. facility, he was not given the copy of branch circular No. 97 /172 dated 16.2.2004 referred to in the charge sheet.

3. According to the concerned workman, thereafter he was transferred from Mahim branch to Mumbai Main branch. He was not told to close the O.D. account with Mahim Branch. He was also not told to surrender the ATM card as well as unused cheque leaves. Since there was money in his account, he had withdrawn it by ATM card and as such he has not committed any misconduct as alleged in the charge sheet.

4. According to the concerned workman, a departmental Enquiry held against him is against the principle of natural justice. The preliminary Enquiry was fixed on 28.09.2006. On that day he did not admit the charges. He only told to Enquiry Officer that since the money was there in his account, he has withdrawn the amount since he was not paid salary for 2 months when he was transferred to Mumbai Main branch and for getting his salary when he approached Mr. Chirmurkar, Dy. Manager, Mahim Branch stating that his salary was not credited to his account and that he has not brought the cheque book with him, that time he was told by Mr. Chirmurkar that there was credit of Rs.1000/- towards education money and he can withdraw the said amount by ATM card by using loose cheque leaf. He contents that he has not admitted the charge during the preliminary Enquiry as alleged.

5. It is the contention of the workman that on next date of Enquiry i.e. on 3.10.2006 the Presenting officer has produced 22 documents. The defence representative without going through it & without explaining the contents of the said documents admitted the said documents. All the documents produced in Enquiry are in English and the contents of documents have not been explained to him either by the defence representative or by the Enquiry officer. He was not aware of the terms & conditions written in the said documents. He was not explained the proceeding in Marathi. Enquiry Officer held the Enquiry in English. The Enquiry officer was biased. As such the findings given by the Enquiry Officer are perverse. He is, therefore, asking for reinstatement in service with full back wages and continuity in service. He has raised the dispute and conciliation failed. Therefore, the dispute has been referred to this tribunal.

6. The first party management resisted the claim by filing written statement Ex.10. It is submitted that second party workman while working in bank, Mahim branch was sanctioned clear O.D. limit of Rs. 2 lakhs vide Zonal Office C & IC proposal No. MSZ:C&IC:(CAD): USD:2001-02:499 dated 22.02.2002. His salary was also credited to the clean O.D. account whereby he could withdraw money as per the requirements from his account by using ATM card or by issuing cheques from the cheque book issued to him by the bank. He was then transferred to banks Stationery Cell at Lower Parel on 30.08.2005 and due to delay on the part of bank his O.D. account was not immediately transferred to Mumbai Main branch and was transferred on 26.10.2005 as per the instructions contained in the branch circular No. 99/91 dated 12.09.2005. As per the bank rules on being transferred from bank's Mahim branch to Stationery Cell at Lower Parel, he was obliged to surrender ATM card and unused cheques leaves of his O.D. account No. 22277 issued to him by the bank, Mahim branch during his tenure at that branch. However, he did not comply with the said but on the contrary used ATM card on 40 occasions at various ATMs during the period from 29.10.2005 to 6.12.2005 to the tune of Rs.2,00,754/-.

7. It is the contention of the first party that the concerned workman has fraudulently withdrew the amount of Rs.2,00,754/- through ATM card during the said period. This came to the notice of the bank when the workman's name appeared in the list of Out of Order Accounts. An investigation was conducted by the investigation department which submitted its report on 2.2.2006. During investigation the workman confessed the above mentioned acts of misconduct and also agreed to repay the same to the bank within the period of 7 days by selling house at Sion or his wife's ornaments. Thereafter the investigation department submitted his investigation report dated 2.2.2006. Even after 7 days the workman did not repay the amount and on 1.2.2006 he deposited only Rs.10,000/- and further reassured to pay the balance amount within 15 days. Thereafter by memorandum Ref. No. MSZ:DA:PKS:159 dated



6.9.2006 he was informed that the disciplinary proceedings should be initiated against him. He was issued charge sheet bearing Ref. No. MSZ:DA:PKS:159 for the acts of misconduct as alleged in the charge sheet. Shri D.M. Khatri, Manager was appointed as Enquiry Officer. The departmental Enquiry was initiated against him where he participated with the defence representative of his choice. Preliminary hearing was held on 28.09.2006 where he was present with his defence representative and asked for adjournment. The adjournment was granted. The next date of hearing was 3.10.2006. On which the workman appeared along with his defence representative Mr. Vinay Tendulkar, office bearer of the union. Enquiry officer on that day enquired from the workman as to whether he received the charge sheet, understood charges and admit charges against him to which he said that he accepted the charges and also stated the reasons for his so doing. The Enquiry officer recorded his statement.

8. It is then contended that the Presenting officer for the bank desired to file the documentary evidence and accordingly filed 22 documents which were taken on record. The defence representative of the workman inspected the said documents and confirmed their genuineness. Thereafter the Enquiry officer submitted his findings on 5.10.2006 on the analysis of evidence on record holding the charges against the workman have been proved. The Enquiry officer issued the Show Cause Punishment Notice bearing No. MSZ:DA:APM:240 dated 25.09.2006 calling him along with defence representative for personal hearing on the proposed punishment and on 5.12.2006 the personal hearing was held where the workman participated along with his defence representative. Thereafter the punishment order bearing Ref. No. MSZ:DA:APM:249 dated 18.12.2006 was issued to the workman and the punishment of dismissal without notice was imposed upon the workman. The workman preferred an appeal against the said punishment order. The Appellate Authority considered the appeal and passed the order confirming the punishment of dismissal without notice awarded to the workman by the disciplinary authority.

9. It is submitted by the first party management that Enquiry is fair and proper and findings are not perverse. Even the punishment awarded is proportionate. It has thus sought the rejection of the reference.

10. Following preliminary issue is framed for my consideration. I reproduce the issue along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether the departmental enquiry held in respect of workman Shri Ramesh P. Ahire is just and proper?	Yes

### REASONS

#### Issue No.1.

11. In respect of enquiry proceedings, the Learned Counsel for the second party workman contended that the workman was not served with charge sheet and show cause notice. It is further submitted that the workman was told to appear before the Enquiry Officer for departmental enquiry along with Shri V.N. Tendulkar, official of All India Bank Employees' Association but he was not served with the order of appointment of Enquiry Officer and Presenting Officer. It is submitted that workman was also not served with bank circular No. 97/172 dated 16.02.2004 and the branch circular No. 99/91 dated 12.09.2005.

12. However, on going through the documents in respect of enquiry proceedings, it appears that on 6.9.2006 intimation of disciplinary proceedings was given to the workman and it bears signature of workman having acknowledged the same on 19.9.2006. The letter dated 6.9.2006 is in Hindi language and it also bears the signature of concerned workman, having acknowledged the same on 19.9.2006. In para 2 of statement of claim the workman has contended that he was served with charge sheet dated 6.9.2006 and in para 3 of the said statement of claim he has stated that the departmental enquiry was conducted against him. These statements clearly establishes that the workman has received the charge sheet before enquiry.

13. What is stated by the workman is that the departmental enquiry held is against the principle of natural justice. It is his contention that the enquiry was held in English language which is not known to him. According to the concerned workman the Enquiry Officer have not explained the procedure of the departmental enquiry. It is also contention of the workman that all the documents were in English and the same were not explained to him in Hindi or Marathi by the I.O. and the I.O. recorded something and his signature were obtained without explaining him the contents thereon.

14. In this respect if we see the papers of enquiry proceedings, it can be seen that during enquiry the charge sheet was given in Hindi language which is known to the workman. List of documents and the copies of charge sheet dated 6.9.2006 were given to workman in Hindi language. Further it appears that the workman during the enquiry

proceedings has given letter Ex.38. In this letter Ex.38 the workman has stated that when he was transferred from Mahim branch to Stationery Cell, Parel, he was not given salary for 2 months. For getting salary when he approached Mr. Chimurkar, Dy. Manager, Mahim branch stating that his salary was not credited and he had not brought cheque book with him. He was told by Mr. Chimurkar that there was credit of Rs.1000/- towards the education money and he can withdraw the same amount by ATM instead of using loose cheque leaves. He went on withdrawing money which was available in the account from time to time as he was not knowing about the banking transactions and that it was his mistake. In this letter he has also stated that he would make arrangement for depositing the excess amount which he had withdrawn by selling his house at Sion or by selling the ornaments of his wife and had asked the concerned officer that he would deposit the excess amount which he had withdrawn within one month. This letter Ex.38 bears signature of concerned workman. It is in Marathi language. This letter also bears the endorsement of Shri Tushar Sakpal, staff clerk to the effect that the statement written by him at the request of Shri Ramesh Ahire i.e. the concerned workman. This would show that the concerned workman had accepted the factual basis of allegations.

15. I say so because, the allegations against the concerned workman are that

- (i) he had O.D. A/c. No. 22277 while he was working at Mahim branch and sanctioned O.D. limit is Rs.2 lakhs.
- (ii) he was transferred from Mahim to Mumbai Main branch in September 2005 and new O.D. A/c. was opened at Mumbai main branch being O.D. A/c. No. 00012611000014.
- (iii) debit balance of Rs.2.02 lakhs in the O.D. A/c. at Mahim branch was transferred to new O.D. A/c. at Mumbai main branch on 26.10.2005 with the said sanctioned limit of Rs.2 lakhs.
- (iv) debit balance in new A/c. had accepted the sanctioned limit, second party workman was aware that he could not have made any further withdrawals from the said A/c.
- (v) second party workman was required to surrender his ATM card concerning his own O.D. A/c. and return the unused cheque leaves to the Mahim branch.
- (vi) second party workman did not surrender ATM card as well as unused cheque leaves at Mahim branch.
- (vii) second party workman knowing fully well that his O.D. A/c. was held over drawn, he went on withdrawing or utilizing the funds to the tune of Rs.1.99 lakhs from his own A/c. which was inadvertently not closed in the bank system.
- (viii) second party workman obtained the wrongful pecuniary advantage to the tune of Rs.1.99 lakhs.

16. As per this letter dated 31.1.2006, it appears that the concerned workman has admitted that he has made a mistake in operating the old O.D. A/c. and assured that he will repay the entire amount withdrawn from his O.D. A/c. by selling his house at Sion or by selling the ornaments of his wife within one month. The question is whether this can be termed as admission of charge by the concerned workman.

17. Learned Counsel for management first party No.1 submitted that the second party workman has voluntarily accepted the charges in presence of his Defence Representative and despite of his voluntarily admission the bank desired to produce the documentary evidence in support of the charges and the Presenting Officer produced 22 documents. The Defence Representative perused the documents and confirmed their genuineness. On the documents being accepted by Defence Representative, the enquiry officer took documents on record and marked as Ex. ME-1 to ME-22. The Enquiry officer also asked Defence Representative whether he wanted to produce anything from defence side and Defence Representative replied in the negative.

18. In this respect, if we see the documents in respect of enquiry proceedings it shows that Enquiry Officer asked the Defence Representative to state about the acceptance or denial of charge leveled against CSE as preliminary hearing is being held on 28.09.2006 and Defence Representative pleaded that the CSE has approached him for defence purpose and he has not gone through the papers. Defence Representative requested for adjournment and the adjournment was granted. The next date was fixed on 3.10.2006 at 3.00 P.M. at the same venue. This daily order sheet dated 28.09.2006 shows that it bears the signature of a concerned workman and his Defence Representative along with Presenting Officer and Enquiry Officer. Daily order sheet dated 3.10.2006 [Ex.52] shows that hearing took place at 3.30 P.M. on that day and when Enquiry officer asked the Defence Representative about the charge as stated in the charge sheet, Defence Representative stated that CSE [concerned workman] voluntarily accepts the charge and then thereafter Presenting Officer wanted to produce documents. Enquiry officer asked Defence Representative to go through the said documents and then thereafter Defence Representative went through the same and confirmed their genuineness. The Enquiry officer then took said documents on record as Ex. ME.1 to ME.22. Thereafter the Enquiry officer asked the Defence Representative whether they want to produce anything from their side and Defence Representative replied in the negative. Enquiry officer then declared that in view of CSE's voluntarily acceptance of

charge, Presenting Officer Defence Representative did not want to submit the written briefs and the hearing in the enquiry stands concluded. This daily order sheet Ex.52 also bears signature of concerned workman. It bears endorsement to the effect that the concerned workman has received the copy of daily order sheet No.3 and acknowledged the receipt of the same on 3.10.2006 itself. That would clearly show that the concerned workman has admitted the charge in presence of Defence Representative and also stated in his letter Ex.38 that he had withdrawn the money which was available in his A/c. from time to time.

19. In view of that Learned Counsel for management first party No.1 seeks to rely on the decision in case of Surjeet Singh Brahma Vs. Bank of India and Ors. (2016) I SSC (L&S 608) to submit that in para 41 of the judgment it has been observed that “there was no need for the bank to have held any inquiry in to the charges when the charges stood proved on admission of the Appellant. The Bank was justified in imposing punishment on the Appellant as prescribed in the rules. We, therefore, find no ground to interfere in the punishment order as we also find that having regard to the nature and gravity of the charge, the punishment imposed on the Appellant appears to be just and proper, calling for no interference therein”.

20. He also seeks to rely on decision in case of Employees State Insurance Corpn. V/s. A.V. Tungare 2014 II CLR pg. 587 wherein it is held that

“Having considered the aforesaid settled position in law that once in employee has admitted to the charges and that there is no cogent material to show that the admission of the charges was recorded under duress or force or pressure and that the admission was unconditional and in unequivocal terms, no fault can be found in the enquiry officer closing the enquiry proceedings. In the present case the disciplinary authority on the basis of the enquiry report which recorded the admission of the First Respondent held that the charges have been proved. In our view, there was nothing unlawful on the part of the disciplinary authority proceedings on such admission made by the First Respondent to pass the Order of dismissal considering the seriousness of the charges”.

21. He also seeks to rely on decision in case of K.L. Tripathi Vs. State Bank of India, SC 1984 (48) FLR pg.38 wherein it is held that

“Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation of the acts absence of opportunity to cross examination does not create any prejudice in such cases. The principles of natural justice will, therefore, depend upon the facts and circumstances of each particular case. The Petitioner was associated with the preliminary investigation that was conducted against him. He participated in that investigation. He gave his explanation but he did not dispute any of the facts nor did he ask for any opportunity to call any evidence to rebut these facts. In that view of the matter, we are of the opinion, that it cannot be said that in conducting the enquiry or framing of the charges or arriving at the decision, the authorities concerned have acted in violation of the principles of natural justice merely because the evidence was not recorded in his presence or that the materials gathered, the gist of which was communicated to him, were not in his presence. As we have set out herein before, indeed he had accepted the factual basis of the allegations.”

22. In view of this legal position, it appears that the charges were informed to the concerned workman which were framed in clear words against the workman and he materially accepted the allegations and gave explanation to the effect that he was not knowing much about the banking transaction but he went on withdrawing money which was available in his A/c. from time to time. Not only that but the enquiry proceedings show that he has voluntarily accepted the charge and even did not produce any documents or adduce any evidence to show that he has not willfully misused his own O.D. This admission of the guilt voluntarily given by the workman particularly given before the Enquiry officer cannot be brushed aside and withdrawn so easily by the concerned workman.

23. Thus, in the light of guidelines given by the Apex court the enquiry is found to be fair and proper.

24. So far as findings of Enquiry officer are concerned, the said findings are marked at Ex.19. It can be seen from the findings that the Enquiry Officer has relied upon the voluntarily admission of the charges by the concerned workman as well as documents filed by the Presenting Officer to arrive at the conclusion, holding the second party workman guilty of charges leveled against him and therefore findings cannot be termed as perverse.

25. That apart the fact remains that the concerned workman has not given any evidence nor produced any document in support of his contention that the findings are perverse. Even his explanation shows that he has withdrawn the amount from time to time which was available in his A/c. and then assured that he would repay the entire amount withdrawn from his O.D. A/c. by selling his house at Sion or by selling the ornaments of his wife. That would again show his admission in respect of withdrawing the amount and therefore the findings of the Enquiry officer on the basis of admission given by the concerned workman cannot be said to be perverse.

26. Thus, I hold that departmental enquiry held against the workman is just and proper and findings are not perverse. Accordingly, I answer Issue No.1 and proceed to pass the following order.

**ORDER**

- 1) Enquiry is held fair and proper.
- 2) Findings of Enquiry Officer are not perverse.
- 3) Parties are directed to argue / lead evidence on the point of quantum of punishment.

Date: 15.02.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 1001.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मोरमुगोवा पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 79/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-36011/1/2009-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 11th April, 2017

**S.O. 1001.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 79/2009) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of Mormugao Port Trust and their workmen, received by the Central Government on 11.04.2017.

[No. L-36011/1/2009-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI**

**PRESENT :** M.V. DESHPANDE, Presiding Officer

**REFERENCE NO. CGIT-2/79 of 2009**

**EMPLOYERS IN RELATION TO THE MANAGEMENT OF  
MORMUGAO PORT TRUST**

The Chairman  
Mormugao Port Trust  
Mormugao Harbour, Goa,  
Goa – 403803.

**AND****THEIR WORKMEN**

The President  
Mormugao Port & Railway Workers' Union  
Main Administrative Office Building  
Mormugao Port Trust,  
Headland Sada,  
Goa – 403 804.

**APPEARANCES :**

FOR THE EMPLOYER : Mr. M.B. Anchan, Advocate.

FOR THE WORKMAN : Mr. G Vijaychandran, Advocate.

Mumbai, dated the 1<sup>st</sup> February 2017.

**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No. L- 36011/ 1 /2009-IR (B-II), dated 07.10.2009 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 refers the said dispute to this Tribunal for adjudication:

*“Whether the claim of Shri Hanumanta G. Kurtikar, Head Clerk that the management of Mormugao Port Trust, has illegally denied him promotion to the Post of Accounts Supt. is legal and justified ? To what relief the workman is entitled for ?”*

2. After receipt of the reference, notices were sent to both parties. In response to the notice, second party workmen filed statement of claim Ex.11. According to the second party workman the post of office Supt. / Assistant Supt. fell vacant on March 2007. The said post was reserved for ST community.

3. As per the recruitment rule the feeder category should have 5 years regular and continuous service in the grade or 20 years regular and continuous services in this post. As per Central Govt. rules if the promotion is effected to higher post within the same grade or group there is no period of probation. As per MPT circular No. GAD (87) PC-A/2005/H-151 dated 16.7.2005, probation period upto one year can be curtailed by Dy. Chairman / Chairman. Accordingly, he requested the management to curtail one year as he was promoted in the year 2006 but his request was not considered favourably.

4. According to the workman the management erred in equating his request for the curtailment of balance probation period to that of relaxation of experience in case of other candidates which have not promoted as per existing recruitment rules as also under reservation rules. His case fall within the frame work of government rules on probation period. Therefore, he should have been promoted to the post of Office Supt. as he fulfilled recruitment rule as on 15.06.2007. He is therefore asking for promotion to the post of Office Supt.

5. First party management resisted that the statement of claim vide written statement Ex.18. According to the management one post of Office Supt. / Accounts Supt. in the pay scale of Rs.6170 – 11975 in class III category was kept vacant for SC candidates since 1.2.2007 as there was no SC candidate eligible from feeder category. As per the seniority of Head Clerk / Sr. Accountant there were 2 SC candidates eligible at Sr. No.4 & 27. The candidate at Sr. No.4 i.e. Shri Umesh Nandanwar has completed 19 years and 6 months of regular services in the grade. He was one year short of experience required as per rules. Whereas the workman i.e. candidate at Sr. No.27 namely Shri Hanumant G. Kurtikar had completed 20 years of service and one year probation period as on 12.6.2007. Neither of the ST candidates at Sr. No.4 i.e. Shri Umesh Nandanwar and at Sr. No.27 i.e. Shri Hanumant G. Kurtikar [workman concerned] were eligible for promotion to the post of Account Supt. unless either of them was given relaxation. As Shri Umesh Nandanwar had the shortfall of 6 months of regular service in the post. It was the case of relaxation in experience. Present concerned workman had shortfall of one year to complete his probation period against the period of 2 years. It was the case of relaxation in probation period. As per the MPE (Recruitment, Seniority and Promotion) Regulations, 1964 and the office order No. GAD (87) PC-A/2005/H-151 dated 16.7.2005 probation period less than one year could be curtailed by Dy. Chairman. However, the then Dy. Chairman had not approved the curtailment of probation period of Shri Hanumant G. Kurtikar, concerned workman on the ground that it would disturb seniority of the senior most candidate Shri Umesh Nandanwar who is at Sr. No.4. However, the Departmental Probation Committee met on 11.09.2009 and while considering the eligible candidate for the post of Office Supt. observed that there was no vigilance clearance for candidate at Sr. No.4 Shri Umesh Nandanwar due to investigation of cast certificate and therefore DPC followed sealed cover procedure and next senior most candidate i.e. Shri Hanumant G. Kurtikar, present workman was promoted to the post of Office Supt. on adhoc basis and that adhoc promotion is still continuing as the case of Shri Umesh Nandanwar is not finalized. It is case of management that Shri Hanumant G. Kurtikar, present workman is not entitled to promotion to the post of office Supt. It has thus sought the rejection of reference.

6. Following issues were framed at Ex.23. I reproduce the issues along with my findings thereon for the reasons to follow:-

Sr. no.	Issues	Findings
1.	Whether management had illegally denied the promotion of Accounts Superintendent to Shri Hanumant G. Kurtikar, Head Clerk ?	Yes
2.	If not, whether Shri Hanumant G. Kurtikar is entitled to promotion ?	Yes
3.	If not, what relief he is entitled to ?	As per final order.
	What order ?	As per final order.

**REASONS****Issue No. 3 :**

7. So far contentions go, it is the contention of the management that as per the MPE (Recruitment, Seniority and Promotion) Regulations, 1964 and the office order No. 76 under reference No. GAD (87) PC-A/2005/H-151 the probation period less than one year can be curtailed by Dy. Chairman. So far as case of concerned workman is concerned, he had shortfall of one year to complete his probation period against the period of 2 years. He had completed 28 years of service and one year probation period as on 12.6.2007. So the shortfall was of one year to complete his probation period. This shortfall could have been considered by giving relaxation of one year to complete his probation period by the Dy. Chairman / Chairman.

8. What has been stated is that Dy. Chairman while giving his views had not approved the curtailment of probation period of Shri Hanumant G. Kurtikar on the ground that it would disturb the seniority of Shri Umesh Nandanwar. But so far as the case of Shri Umesh Nandanwar is concerned, he has completed 19 years and 6 months regular service in the port and 4 years of regular service in the grade. He was short of one year experience required as per the recruitment rules. Recruitment rules prescribed 20 years of regular and continuous service in the port and 5 years of regular and continuous service in feeder grade. That would show that Shri Umesh Nandanwar was not eligible to promotion on both the counts. On one side he had shortfall of experience and on the other side there was no vigilance clearance for ST candidates at Sr. No.4 i.e. Shri Umesh Nandanwar due to investigation of his cast certificate.

9. As a matter of fact the management has stated in their rejoinder to statement of claim that it has now been learnt that there indeed has been a notification dated 4.3.2004 issued by the Ministry of Shipping [Ports Wing] notifying the Mormugao Port Trust, Mormugao Port Employees recruitment seniority and promotion providing that, there shall not be any probation in case of transfer / promotion from one grade to another grade but within the same class i.e. Class III to class III. The concerned workman Shri Hanumant G. Kurtikar was promoted to class C post of Accountant to another class post of Sr. Accountant on 13.06.2006 and therefore in view of MPE (Recruitment, Seniority and Promotion) Regulations, 1964 he was required no probation in the prescribed post of Sr. Accountant / Head Clerk and as such fulfilled the eligibility criteria of promotion to the next higher post of Office Supt. as on 13.6.2006 itself. He fulfilled eligibility criteria of having completed more than 20 years i.e. nearly about 27 years as on that date. Thus on 1.2.2007 when the vacancy arose of the post of Office Supt. / Accounts Supt., the concerned workman i.e. Shri Hanumant G. Kurtikar was eligible for the promotion to the said post. In view of this rejoinder to the statement of claim by the management, it can be said that the concerned workman was eligible for promotion to the post of office Supt. / Accounts Supt. as on 1.2.2007.

10. Even then the Learned Counsel for the management submitted that the Dy. Chairman had not approved the curtailment of the probation period of Shri Hanumant G. Kurtikar. But when as per this amended rules there shall not be any promotion in case of transfer / promotion from one grade to another grade within the same class, then there was even no necessity for curtailment of probation period and in view of that even that time i.e. on 1.2.2007 concerned workman Shri Hanumant G. Kurtikar was eligible for the said post. It is of no consequence therefore that the Dy. Chairman has not approved the curtailment of probation period of Shri Hanumant G. Kurtikar.

11. As a matter of fact, it appears that Shri Hanumant G. Kurtikar was promoted to the post of office Supt. on ad hoc basis only because it was considered that there was no vigilance clearance of Shri Umesh Nandanwar due to investigation of cast certificate. When Shri Hanumant G. Kurtikar was eligible for promotion as on 1.2.2007 there was no necessity to continue him on ad hoc promotion when infact he ought to have promoted to the post of Office Supt./ Accounts Supt. on 1.2.2007 considering his eligibility for the promotion to the said post.

12. Considering all these facts, I find that the claim of concerned workman Shri Hanumant G. Kurtikar, Head Clerk that the management of Mormugao Port Trust had illegally denied him promotion to the post of Office Supt. is legal and justified. He was eligible for the promotion as on 1.2.2007 and therefore he is entitled for the same. The above issues are therefore answered accordingly as indicated against each of them in terms of above observations.

**Issue Nos. 3 & 4 :**

13. In view of my findings to the above issues I hold that concerned workman Shri Hanumant G. Kurtikar is entitled to promotion to the post of Accounts Supt. and therefore he is entitled to relief sought. He be given promotion of the said post. The issues are answered according. Thus the order.

**ORDER**

Reference is allowed with no order as to costs. Shri Hanumant G. Kurtikar, concerned workman is entitled to promotion to the post of Accounts Supt. as on 1.2.2007 and he be given promotion to that post as on 1.2.2007.

Date: 1.2.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 1002.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोचीन पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोचीन के पंचाट (संदर्भ सं. 42/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-35011/02/2014-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 11th April, 2017

**S.O. 1002.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Cochin as shown in the Annexure in the Industrial Dispute between the management of Cochin Port Trust and their workmen, received by the Central Government on 11.04.2017.

[No. L-35011/02/2014-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
ERNAKULAM****Present:** Shri. K. Sasidharan, B. Sc., LLB, Presiding Officer(Friday the 17<sup>th</sup> day of February, 2017/28<sup>th</sup> Magha, 1938)**ID No. 42/2014**

Union	:	The General Secretary, Cochin Port Employees Sangh, BMS Office, Mahaveer Building, W. Island , Cochin – 9.
		By Advs. Shri. S. Manu & Shri. S. Sreedutt
Management	:	The Chairman, Cochin Port Trust, Wellington Island, Cochin –
		By M/s. B. S. Krishnan Associates

This case coming up for final hearing on 20.01.2017 and this Tribunal-cum-Labour Court on 17.02.2017 passed the following:

**AWARD**

In exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (Act 14 of 1947) the Central Government referred the following dispute before this Tribunal for adjudication.

2. The dispute referred for adjudication before this Tribunal is:

**“Whether the action of the Cochin Port Trust management in denying the enhanced washing allowance of the workmen of the hospital and fire brigade department at the rate of 100% from 01.01.2007 instead of 40% is justifiable? What relief the union/workmen are entitled?”**

3. After the receipt of reference Order No.L-35011/02/2014-IR(B-II) dated 22.08.2014, issued by the Ministry of Labour, Government of India, summons was issued to the parties to appear, submit pleadings and produce documents

to substantiate their respective contentions. On receipt of the summons the parties entered appearance through counsel and submitted their pleadings.

4. The averments in the claim statement filed by the union in brief are as follows:-

In the wage revision settlement dated 02.08.2000 for the period from 01.01.1997 to 31.12.2006, the washing allowance for different sections of employees other than hospital and fire brigade staff working in the management was fixed @ ₹50/- and ₹65/- respectively per month. In the agreement it is stated that in respect of hospital and fire brigade staff the claim for washing allowance will be discussed and settled locally. Accordingly in the discussion between the union and the management the washing allowance for the aforesaid categories of workmen was fixed @ ₹100/-. In pursuance of that decision, the hospital and fire brigade staff were receiving washing allowance @ ₹100/- w.e.f. 01.01.1997.

5. The workmen belonging to the hospital and fire brigade are uniform wearing employees. For the purpose of keeping their dress neat and clean the washing reimbursement is treated as special washing allowance and hence it was fixed at a higher rate than the washing allowance for the other workers.

6. On 19.01.2010 a memorandum of settlement on wage revision, retirement benefits and conditions of service in respect of Port and Dock Workers at the major ports across the country was signed at the Bipartite Wage Negotiation Committee (BWNC) held at Goa between the five major Labour Federations and management of Port Trusts in the presence of the Deputy Chief Labour Commissioner (Central), Mumbai in accordance with Section 12(3) of the Industrial Disputes Act, 1947. Clause 18 of the terms of settlement reads as follows:

*“18. **WASHING REIMBURSEMENT** : Washing Reimbursement and special washing reimbursement will be enhanced from Rs.50 and Rs.65 per month to Rs.100 and Rs.130 respectively, with automatic increase of 25% when DA goes up by 50%. The claim of washing allowance in respect of hospital staff and fire brigade staff, who are currently in receipt of such allowance, will be discussed and settled locally.”*

7. As per the terms of the aforesaid settlement, washing allowance of ₹50/- and ₹65/- respectively allowed in the earlier settlement was enhanced to ₹100/- and ₹130/- respectively. By virtue of that settlement there was 100% increase of washing allowance. It was mentioned as special washing reimbursement. Provision was made to the effect that the arrears will be paid w.e.f.01.01.2007. It was provided in the agreement that as and when the percentage of Dearness Allowance exceeds by 50%, there will be an automatic increase of 25% in the special washing reimbursement/allowance. Order No.A-29018/5/2006-PEI dated 26.07.2010 issued by the Ministry of Shipping relating to pay revision of Class I and Class II officers of Major Port Trusts and Dock Labour Boards it is stated that the washing allowance payable will be doubled from the existing rates w.e.f. 01.01.2007.

8. Clause 18 of the settlement dated 19.01.2010 reads as follows:

*“The claim of washing allowance in respect of the hospital and fire brigade staff who are currently in receipt of such allowance, will be discussed and settled locally.”*

9. The port management as per Order No.A8/LA/2012-S dated 04.01.2013 enhanced the washing allowance of hospital and fire staff by 40% and fixed it as ₹140/-. The order was given effect only from 01.01.2010. The arrears were disbursed along with the salary for May, 2013. In fact the workmen belonging to those categories are entitled to get enhancement of washing allowance w.e.f.01.01.2007. Even though the allowance was described as ‘special local allowance’ by the management, it is an integral component of the basic salary structure. Therefore the management is bound to implement the terms of settlement in a realistic manner. The decision aforesaid was taken by the management in an arbitrary manner without hearing the affected staff and hence it is clear violation of the terms of settlement by the management.

10. During October, 2011 the percentage of DA payable to the workmen exceeded 50%. At that time the management refused to implement the automatic increase of 25% of washing allowance under the pretext that the port was facing severe financial crisis. Enhancement by 25% was implemented only from May, 2013 onwards as per Order No.A8/CEA&WA/2010/S dated 20.05.2013. The same enhancement was not granted to hospital and fire brigade staff. The management acted in a discriminatory manner towards the hospital and fire brigade staff. The action of the management was clear violation of the terms and conditions of settlement.

11. As per the order dated 04.01.2013, instead of increasing washing reimbursement to double the rate applicable as in the case of other staff, the management enhanced only 40% in relation to the hospital and fire brigade staff. So also the automatic increase of 25% in washing allowance in case the percentage of DA exceeds 50% was also not granted to the hospital and fire brigade staff. The workmen under this category are even now getting ₹140/- only towards washing reimbursement. The action of the management is arbitrary, illegal, unfair and against the terms and conditions of settlement.



12. As per the new memorandum of settlement dated 25.10.2013 entered under Section 12(3) of the Industrial Disputes Act, 1947 before the Chief Labour Commissioner (Central), New Delhi over the charter of demands of wage structure and allied matters between five major federations of Port and Dock Workers operating in major Port Trusts and Dock Labour Board and Management, the amount of washing allowance was enhanced by 25% i.e., ₹125/- and ₹163/- respectively to the workmen and for other categories of employees the amount was enhanced to ₹155/- and ₹200/- respectively. Even then the hospital and fire brigade staff were excluded while granting the aforesaid benefits. They are getting only ₹140/- as washing allowance. There was clear discrimination in granting washing allowance to the workmen employed as hospital and fire brigade staff under the management. They are the only workmen who will have to wear special uniforms while on duty. They are entitled to get higher amount when compared with other categories. Till the year 2006, they were getting higher amount towards washing allowance in comparison with other categories. After the wage revision in the year 2010 they were getting enhancement of only 40% in the washing allowance whereas all the other categories of workmen are getting 100% enhancement in washing allowance. Apart from this the staff working under class I and class II were also getting 100% increase in washing allowance in their settlement. The arrears were granted to the hospital and fire brigade staff only w.e.f.01.01.2010 whereas in all other categories were granted arrears of washing allowance w.e.f.01.01.2007. In the settlement of the year 2013 also they were discriminated as against the other employees working in the management.

13. The union raised the dispute requesting to have parity in granting washing allowance to the hospital and fire brigade staff. As in the case of workmen in other categories the employees working in the hospital and fire brigade section are entitled to get 100% increase in washing allowance w.e.f.01.01.2007. So also they are entitled to get enhancement in accordance with the terms and conditions in the settlement dated 19.01.2010. Therefore the union has requested to pass an award declaring that the demands of the hospital and fire brigade staff are justifiable and they are entitled to get all the benefits in accordance with the charter of demands w.e.f.01.01.2007.

14. The contentions in the written statement filed by the management in brief are as follows:-

The management has denied all the averments in the claim statement filed by the union except those that are specifically admitted. The union has no right to raise a dispute of this nature for the reason that the subject-matter of the dispute was accepted by the modality unions. This dispute is raised by a minority union. They are not competent to raise the dispute. The management is a major port and is governed by the provisions of the Major Port Trust Act, 1963. In all the major ports, for regulating the wage structure, the terms and conditions of employment, in relation to Class III and Class IV employees, wage revision settlements are applicable. In the case of Class I and Class II employees pay revision orders are applicable. In para 18 of the wage revision settlement dated 19.01.2010, with effect from 01.01.2007, provides that the claim of washing allowance in respect of hospital and fire brigade staff who were currently in receipt of such allowance, will be discussed and settled locally. As per that clause washing allowance is identified as a local allowance and it is to be discussed and settled after discussion with the trade unions. Accordingly bilateral meeting was held between the management and the trade unions regarding the issue of enhancement of local allowance and in that it was agreed to enhance the existing local allowances, including special washing allowance at 40% w.e.f.01.01.2010, instead of 01.01.2007. The said decision was taken due to the financial crisis raised by the management. That decision was approved by the Board of Trustees of Cochin Port Trust as per resolution No.155 dated 28.03.2013.

15. After arriving at a settlement with the unions and in accordance with clauses 18 and 23 of the wage revision settlement, the management enhanced the existing local allowance including special washing allowance in respect of hospital and fire brigade staff at 40% w.e.f.01.01.2010. The said settlement provides provision for settlement of all local allowance in respect of hospital and fire brigade staff to be settled locally and management did the same as claimed by the union. The rate of percentage of increase at 100% is not specified anywhere in the settlement.

16. As per wage revision settlement dated 02.08.2000, effective notionally from 01.01.1997 and effective from 01.01.1998 for a period of 10 years from 01.01.1997 to 31.12.2006, the washing reimbursement and special washing reimbursement was enhanced from ₹22/- and ₹45/- respectively to ₹50/- and ₹65/- respectively. It was provided that the claim for washing allowance in respect of the hospital and fire brigade staff who were in receipt of such allowance at that time shall be discussed and settled locally. At that time all the employees in the management were getting washing reimbursement only. It has been decided to introduce special washing allowance to the hospital and fire brigade staff as requested by the union and the same was fixed at ₹100/- per month w.e.f.01.01.1998 and an order No.A8/BWNC/2002-S dated 12.06.2002 was issued. Washing reimbursement and special washing reimbursement are not local allowances to be settled locally, but are to be settled through Bipartite Wage Negotiation Committee (BWNC) settlement. Since the washing allowance in respect of hospital and fire brigade staff is a local allowance it has to be settled locally and the rate of allowances will be decided in accordance with the mutual settlement with the trade unions. As per the settlement automatic increase of 25% when DA goes upto 50% is applicable in respect of washing reimbursement and special washing reimbursement. The said clause is not applicable to the special washing

allowance payable to hospital and fire brigade staff. Order No.A-29018/5/ 2006 – PEI dated 26.07.2010 is not applicable to class III and IV employees. It is applicable only for class I and class II officers.

17. As per clause 18 of the wage revision settlement dated 19.01.2010 *“washing reimbursement and special washing reimbursement will be enhanced from Rs.50 and Rs.65 per month to Rs.100/- and Rs.130/- respectively, with automatic increase of 25% when DA goes up by 50%. The claim of washing allowance in respect of hospital and fire brigade staff who were currently in receipt of such allowance, will be discussed and settled locally”*. As per the clause in the wage revision settlement aforesaid, the management held bilateral discussion with the major trade unions in Cochin Port Trust on 01.10.2012 on the issue of enhancement of local allowance and in that the management offered to enhance existing local allowances at 40% w.e.f.01.01.2010 due to severe financial crisis faced by the management and it was agreed by the unions. As per that settlement the management issued order dated 04.01.2013 and it was approved by the Board of Trustees as per resolution No.155 dated 28.03.2013. The management has not violated the terms and conditions of the settlement dated 19.01.2010. As per the clause for wage revision settlement dated 19.01.2010 there shall be an automatic increase of 25% towards washing reimbursement when DA goes up by 50%. This clause is not applicable to special washing allowance in respect of hospital and fire brigade staff for the reason that it has to be discussed and settled locally. The discrimination alleged by the union is absolutely unfounded.

18. The new wage revision settlement dated 25.10.2013 came into force w.e.f.01.01.2012. In that settlement the amount of washing reimbursement and special washing reimbursement has been enhanced from ₹125/- and ₹163/- per month to ₹155/- and ₹200/- respectively with provision for automatic increase of 25% when DA goes up by 50%. The claim in relation to hospital and fire brigade staff is to be settled locally by mutual agreement between the management and modality unions in due course. So far the discussion could not take place due to financial crisis faced by the management.

19. The contention of the union that the hospital and fire brigade staff are the only categories in Cochin Port who are bound to wear specific uniforms, is absolutely incorrect. Employees working in departments such as – traffic, mechanical, marine etc. are bound to wear specific uniforms. As per the wage revision settlement dated 02.08.2000 special washing allowance in respect of hospital and fire brigade staff was introduced in the management port w.e.f.01.01.1998. After the expiry of the settlement dated 02.08.2000, the wage settlement dated 19.01.2010 came into force for a period of 5 years from 01.01.2007 to 31.12.2011. Para 18 of the wage revision settlement dated 19.01.2010 specifies that special washing allowance as a local allowance and by mutual agreement with unions it was enhanced at 40% w.e.f.01.01.2010 due to severe financial crisis faced by the management. The wage revision settlement dated 25.10.2013 provides that all the local allowances shall be discussed and settled locally within a period of six months. Due to austerity measures the revision of local allowances in respect of class III and class IV employees including special washing allowance of hospital staff and fire brigade staff were not taken up for discussion with trade unions. It will be finalized in due course. There was no discrimination on the part of the management in granting or refusing special washing allowance to the hospital and fire brigade staff. The management has requested to uphold their contentions and reject the claim of the union.

20. After filing written statement by the management the union filed rejoinder reiterating the contentions in the claim statement. They have requested to uphold their contention and allow their claim.

21. After filing rejoinder by the union the matter was posted for taking steps and for production of documents. No oral evidence has been adduced on behalf of the union. Exts.W1 to W7 are the documents marked on their behalf. On behalf of the management MW1 was examined and Exts.M1 to M8 are the documents marked. Heard both sides.

22. The points arising for consideration are:

**“(i) Whether the claim by the workmen of the hospital and fire brigade department of the management that they are entitled for enhancement of washing allowance at 100% w.e.f.01.01.2007 instead of 40% is justifiable?**

**(ii) To what relief the union/workmen are entitled?”**

23. Point No.(i):- The dispute referred for adjudication is:

**“Whether the action of the Cochin Port Trust management in denying the enhanced washing allowance of the workmen of the hospital and fire brigade department at the rate of 100% from 01.01.2007 instead of 40% is justifiable? What relief the union/workmen are entitled?”**

24. The union raised the issue relating to the enhancement of washing allowance for the workmen employed in the hospital and fire brigade department in the management at 100% from 01.01.2007. The union has stated that in the wage revision settlement dated 02.08.2000 relating to the period from 01.01.1997 to 31.12.2006 the washing allowance for different sections of employees other than the hospital and fire brigade staff was fixed @ ₹50/- and ₹65/- respectively. In that agreement it is stated that in respect of hospital and fire brigade staff the claim for washing

allowance will be discussed and settled locally. As per that clause in the wage revision settlement there was discussion between the union on the one hand and the management on the other relating to the payment of washing allowance to the categories mentioned above and it was fixed as ₹100/- and accordingly the hospital and fire brigade staff were receiving washing allowance @ ₹100/- w.e.f.01.01.1997.

25. The union has stated that on 19.01.2010 a memorandum of settlement on wage revision, retirement benefits and conditions of service of Port and Dock Workers at the major ports was signed at the Bipartite Wage Negotiation Committee (BWNC) meeting held at Goa between five major federations and the management of Port Trusts in presence of Deputy Chief Labour Commissioner (Central), Mumbai and as per clause 18 of terms of that settlement which reads as follows:

*“18. **WASHING REIMBURSEMENT** : Washing Reimbursement and special washing reimbursement will be enhanced from Rs.50 and Rs.65 per month to Rs.100 and Rs.130 respectively, with automatic increase of 25% when DA goes up by 50%. The claim of washing allowance in respect of hospital staff and fire brigade staff, who are currently in receipt of such allowance, will be discussed and settled locally.”*

26. The union in this case has stated that in the settlement aforesaid, there was an increase of 100% of washing allowance w.e.f.01.01.2007 with provision for automatic increase of 25% of special washing reimbursement/ allowance when the percentage of DA goes up by 50%. It is stated that in the settlement it is provided that the claim for washing allowance in respect of the hospital staff and fire brigade staff who are in receipt of such allowance shall be discussed and settled locally. The grievance of the union is that even though there was 100% increase in washing allowance in relation to the workmen employed under the other sections of the management, the workmen employed in the hospital and fire brigade department were not granted simultaneous increase in washing allowance in proportion to the enhancement given to the workmen employed in the other departments. It is stated that there was discrimination on the part of the management in granting enhancement of the washing allowance to the workmen employed in the hospital and fire brigade department. The union has stated that the action of the management in acting discriminately against the interest of the employees working in the hospital and fire brigade department is illegal, unjust and improper. Therefore they sought parity in enhancement of the washing allowance in proportion to the enhancement given to the workmen employed in the other department.

27. The management has disputed the claim of the union. According to them the union which raised this industrial dispute is a minority union and hence they have no legal right to maintain a claim especially for the reason that the majority union has agreed only for the enhancement of 40% of washing allowance to the workmen employed in the hospital and fire brigade department. It is also stated that financial stringency of the management was the major factor which compelled them to arrive at such a decision. The contention of the union that the workmen employed in the hospital and fire brigade section were discriminated by the management as against the employees in the other departments, is denied by the management.

28. Admittedly in the wage revision settlement mentioned in the claim statement by the union and the written statement by the management, in relation to washing reimbursement it is specifically provided that the claim for washing allowance in respect of the hospital and fire brigade staff, who are in receipt of such allowance, shall be discussed and settled locally. While examined as MW1 the Assistant Secretary of the management has stated that the management is bound to follow the terms and conditions in the wage revision settlement. MW1 has admitted the enhancement of washing allowance to the workmen employed in the other sections of the management.

29. MW1 has stated that the union involved in this reference has not been called for the discussion in the matter of granting special washing allowance to the hospital and fire brigade department. He has further stated that the union involved in this reference is not a modality union. MW1 has stated that in the wage revision settlement that the claim for washing allowance in respect of the hospital and fire brigade staff shall be discussed and decided locally. Even though MW1 has disputed the claim of the union for enhancement of washing allowance in relation to the workmen employed in the hospital and fire brigade department, on going through the documents marked on behalf of the union and that of the management it is evident that there was no effective discussion or proper decision relating to the enhancement of washing allowance to the workmen employed in the hospital and fire brigade department. As per the wage revision settlement the management has granted enhancement in washing allowance to the workmen employed in other sections of the management. Even though it is specifically provided in the wage revision settlement that the claim for washing allowance in respect of the hospital and fire brigade staff who are currently in receipt of such allowance, will be discussed and settled locally, the grievance of the employees working in this department was not considered properly by the management. Non-granting of special washing allowance at the rate as allowed to the workmen in the other category amounts to clear discrimination in relation to the workmen employed in the hospital and fire brigade department under the management. Therefore it is evident that the claim of the union in this dispute for special washing allowance at 100% w.e.f.01.01.2007 to the hospital and fire brigade staff is justifiable. It follows that the union is entitled to the relief claimed as per this reference. The point is answered accordingly.

30. Point No.(ii):- In view of the finding on point No.(i) the union is entitled to the relief claimed. The point is answered accordingly.

31. In the result an award is passed holding that the union is entitled to the relief as claimed in the reference. The management is directed to grant the workmen employed in the hospital and fire brigade department, enhanced the washing allowance at 100% w.e.f.01.01.2007 instead of 40%. The arrears shall be paid in three equal instalments.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 17<sup>th</sup> day of February, 2017.

SASIDHARAN K., Presiding Officer

## **APPENDIX**

### **Witness for the union**

NIL

### **Witness for the management**

MW1                      29.04.2016                      Shri. N. Pradeep Kumar

### **Exhibits for the union**

- W1            -            True copy of the Memorandum of Settlement dated 19.01.2010 arrived at before the Deputy Chief Labour Commissioner (Central), Mumbai over Charter of Demands of wage structure and allied matters between the five major federations operating in major Port Trusts and Dock Labour Boards and the management.
- W2            -            True copy of the statement issued by the Deputy Secretary showing the revised rate of various special allowances to be paid to different categories with effect from 01.01.1998.
- W3            -            True copy of the Circular bearing No.A8/CEA & WA/2010/S dated 20.05.2013 issued by the Secretary, Administrative Office, Cochin Port Trust, Cochin.
- W4            -            True copy of Settlement on Wage Revision, Retirement Benefits and Conditions of Service of Port & Dock Workers at The Major Ports w.e.f.01.01.2012
- W5            -            True copy of the periodical bilateral meeting convened by the Secretary with trade unions of Cochin Port Trust on various demands on 14.06.2013.
- W6            -            True copy of the letter No.CPES/Wage Revision/2007-2011/ 2013 dated 20.09.2013 addressed to the Secretary, Cochin Port Trust issued by the General Secretary of the union.
- W7            -            True copy of the Corrigendum bearing No.LO/22/CS/2014-S dated 04.03.2014 issued by the Secretary, Administrative Office, Cochin Port Trust, Cochin.

### **Exhibits for the management**

- M1            -            Copy of relevant pages of Settlement on Wage Revision, Retirement Benefits and Conditions of Service of Port & Dock workers at The Major Ports w.e.f.01.01.2007 (signed on 19<sup>th</sup> January, 2010 at Goa)
- M2            -            Copy of the minutes of proceedings of ordinary meeting No.6 of 2012-13 of Board of Trustees held on 28.03.2013 held before the Chairman of the Cochin Port Trust.
- M3            -            Copy of the Order bearing No.A8/BWNC/2002-S dated 12.06.2002 issued by the Secretary, Administrative Office, Cochin.
- M4            -            Copy of the forwarding letter bearing No.LO/22/WRC/2010-S dated 06.10.2012 issued by the Secretary, Cochin Port Trust.
- M5            -            Copy of the minutes of the bilateral meeting held on 01.10.2012 before the Secretary, Cochin Port Trust regarding revision of local allowances as per BWNC Settlement dated 19.01.2010.
- M6            -            Copy of the Order bearing No.A8/Local Allowances/2012-S dated 04.01.2013 issued by the Secretary, Administrative Office, Cochin Port Trust, Cochin.
- M7            -            True copy of the relevant pages of Memorandum of Settlement dated 25.10.2013 arrived at before the Chief Labour Commissioner(Central), New Delhi over Charter of Demands of wage structure

and allied matters between the five major federations of Port & Dock Workers operating in major Port Trusts and Dock Labour Board and the management.

M8 - Copy of the statement issued by the Secretary showing the rate of various special allowances to be paid to different categories w.e.f.01.01.2010.

नई दिल्ली, 11 अप्रैल, 2017

**का.आ. 1003.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चैन्नई पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 23/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-33012/1/2016-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 11th April, 2017

**S.O. 1003.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of Chennai Port Trust and their workmen, received by the Central Government on 11.04.2017.

[No. L-33012/1/2016-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 3<sup>rd</sup> April, 2017

**Present :** K.P. PRASANNA KUMARI, Presiding Officer

#### Industrial Dispute No. 23/2016

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Chennai Port Trust and Another and their workman)

#### **BETWEEN :**

Sri K. Punniyanathan : 1<sup>st</sup> Party/Petitioner

#### **AND**

1. The Chairman : 2<sup>nd</sup> Party/1<sup>st</sup> Respondent  
Chennai Port Trust  
Rajaji Salai  
Chennai-600001

2. The Traffic Manager : 2<sup>nd</sup> Party 2<sup>nd</sup> Respondent  
Traffic Department (Railway Division)  
Chennai Port Trust, Rajaji Salai  
Chennai-600001

#### **Appearance :**

For the 1<sup>st</sup> Party/Petitioner : M/s R.P. Panneer Selvam, Advocates

For the 2<sup>nd</sup> Party/1<sup>st</sup> & 2<sup>nd</sup> Management : Sri M.R. Dharani Chander, Advocates

#### **AWARD**

The Central Government, Ministry of Labour & Employment vide its Order No. L-33012/1/2016-IR (B.II) dated 31.03.2016 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

*“Whether the termination of the service of Sri K. Punniyanathan without any terminal benefits is justified or legal? Whether Sri Punniyanathan is entitled to receive terminal benefits? If yes, to what extent?”*

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 23/2016 and issued notice to both sides. Both parties have entered appearance through their counsel and filed Claim and Counter Statements respectively.

3. The averments in the Claim Statement in brief are as below:

The Respondent is a Central Government Organization. The petitioner is an employee of the Respondent. He was appointed as Hospital Orderly under Ex-Serviceman quota. He was subsequently transferred to the Traffic Department and was promoted as Shunting Master in the year 1996. While in service the petitioner had discharged his duties to the satisfaction of the superior Officers. In the year 2002, the petitioner had obtained housing loan and had purchased housing plot. Subsequently, some financial rift developed between HUDCO, the loan provider and the land promoters. So the purchasers of the housing plots including the petitioner repaid the entire housing loan amount to HUDCO. The petitioner did not obtain any wrongful gain in getting the plot. The petitioner was not able to attend duty from 01.02.2006 due to ill-health. He applied for leave on medical grounds. The petitioner was not able to manage his family in the absence of any income. He was not able to pay even the monthly rent for his rented premises. He had to shift his residence to a low rent premises. While the petitioner was under treatment, in 2012, the Management had sent an intimation letter to him. During this period also he had informed the Respondent about his continuous ill-health and had requested for further leave. After recovery from his illness, in February 2014, the petitioner approached the Respondent to join duty. The petitioner was informed by a letter dated 14.02.2014 that he was removed from service by order dated 29.09.2007 after conducting a departmental enquiry for the misconduct of inducing HUDCO to sanction a loan of Rs. 2,30,000/- and obtaining wrongful gain of Rs. 70,000/- in collusion with M/s Kothari Constructions. The petitioner was not aware of the enquiry proceedings against him. Disciplinary proceedings has been initiated against him based on false complaint. The petitioner was not given any opportunity to defend the charges alleged against him. The petitioner has raised the dispute accordingly. During the course of conciliation proceedings the petitioner has submitted appeal to the Respondent against his dismissal from service. The appeal was dismissed. The dismissal of the petitioner from service is not legal or justified. An Award may be passed setting aside the order of removal of the petitioner from service and directing the Respondent to reinstate the petitioner in service with all benefits including backwages till the date of his retirement and also directing the Respondent to allow terminal benefits to the petitioner.

4. The Respondent has filed Counter Statement contending as below:

The petitioner has raised the dispute challenging his removal from service on 29.09.2007 in the year 2016 only after 9 years of removal from service. The dispute is not maintainable. The petitioner had joined the Respondent establishment in the year 1981 as Hospital Orderly in the Medical Department. He was appointed as Coupling Porter in the Traffic Department in the year 1987. He was promoted to the post of Pilot-Man in January 1995 and as Cabin Man in June 1995. He was transferred to the post of Shunting Master in the year 1996. He was reverted to the post of Pilot Man as punishment for the misconduct of forgery and falsification of salary slip issued by the Respondent for obtaining Personal Loan from Bank of Baroda. The petitioner borrowed money and obtained pecuniary benefits in the matter of purchasing plot in Kothari New Town at Panankottur Village. He entered into a false Sale Agreement with Kothari Constructions stating that he paid Rs. 70,000/- as development charges and induced HUDCO to sanction and release Rs. 2,30,000/- out of which he received Rs. 70,000/- as incentive from M/s Kothari Constructions. Although the cost of the plot was only Rs. 96,668/-, loan was obtained for Rs. 2,30,000/- and the remaining amount was made payable to Kothari Constructions. Thus he caused wrongful loss of Rs. 2,30,000/- to HUDCO and obtained wrongful gain to himself and others. A complaint was received from SBI regarding the incident and charge was framed against the petitioner for the misconducts committed by him. Though Charge Sheet was sent to him in his residential address, it was returned with the postal endorsement that he has left. Several notices sent to him by the Enquiry Officer were also returned with such endorsement. Two employees were deputed to serve notice to the petitioner in person. They returned and informed that the petitioner is not living in the address given by him. To avoid disciplinary proceedings the petitioner went absconding from February 2006. He shifted his resident to various places. So the enquiry had to be conducted in his absence. The Disciplinary Authority had issued Show Cause Notice to the petitioner seeking explanation on the report of the Enquiry Officer. This was also returned with the postal endorsement that the addressee has left. The Disciplinary Authority had removed the petitioner from service by order dated 29.09.2007. Only in 2014 the petitioner had sent a letter to the Respondent asking to inform him of his position in the service. He was informed of his removal from service. The petitioner was awarded punishments on 6 occasions before his removal from service for various misconducts. The petitioner had absented himself from duty without prior sanction from his superiors from 02.0.2006. He was not on medical leave as stated by him in the Claim Statement. The petitioner is not entitled to any relief.

5. The evidence in the case consists of documents marked as Ext.W1 to Ext.W9 and Ext.M1 to Ext.M31.

**6. The points for consideration are:**

- (i) Whether termination of petitioner from service is justified?
- (ii) What, if any is the relief to which the petitioner is entitled?

**The Points**

7. The petitioner had obtained appointment in the service of the Respondent under Ex-Serviceman quota. He was working as Shunting Master in 2006 while disciplinary proceedings had been initiated against him. According to the petitioner, because of his ill-health he was not able to attend duty from February 2006. He recovered from his illness only in 2014 and made an enquiry with the Respondent about his position in the service and then only he came to know that disciplinary proceedings had been initiated against him and he has been removed from service. According to the Respondent proceedings had been initiated against him based on a CBI enquiry. He had absconded on coming to know about the proceedings to be initiated against him.

8. According to the Respondent the petitioner had entered into a Sale Agreement with Mahaveer Chand Kothari of Kothari Constructions on 08.05.2002 in which it has been stated that he had paid Rs. 70,000/- as advance by cheque of the same date. On investigation it was revealed that he had not made any such payment. This statement was made to induce HUDCO believe that the petitioner had invested his share for acquisition of a housing loan. The cost of the plot was inflated to Rs. 3,00,000/- including development cost. However Sale Deed was executed in his favour mentioning the cost of the plot as Rs. 96,668/- However, he obtained loan of Rs. 2,30,000/- for purchasing the plot and issued authorization letter to the representative of the Kothari Constructions to collect the loan amount. On the basis of this letter amount was released to Kothari Constructions by cheque. On completion of this transaction the petitioner received a cheque of Rs. 70,000/- from Kothari Constructions. According to the Respondent an inflated amount was shown in the Sale Agreement to accommodate the Cash Incentive promised by the developer to the petitioner. The Respondent had charge-sheeted the petitioner alleging that he had acted in a manner unbecoming of a public servant by borrowing money and obtaining pecuniary benefit, for not obtaining prior sanction for acquiring immoveable property, for not obtaining prior sanction for availing housing loan and for affixing forged and falsified signature of the Traffic Manager and for affixing bogus Office Stamp of the Traffic Manager of Chennai Port Trust in the Employee's Verification Form of HUDCO for obtaining housing loan. It is the case of the Respondent that several notices were sent to the petitioner at the address declared by him but he was not available at the address and notices were returned and that even employees were sent to his residence to serve the notice but he was not available there. The Enquiry Officer appointed to enquire into the charge on the petitioner had conducted the enquiry in his absence as notice could not be served on him. The Enquiry Officer had found all the charges except one proved and had submitted report accordingly. The Disciplinary Authority found the Charge which was found not proved by the Enquiry Officer also to be proved. Subsequently, also notice was sent to the petitioner but again it could not be served. Ultimately, the Disciplinary Authority had passed order on 29.09.2007 removing the petitioner from service.

9. The petitioner has stated in the Claim Statement that he was not aware of the enquiry conducted in his absence. He has further stated that the enquiry was conducted without giving any opportunity to him to defend the charges alleged against him and this has resulted in wrongful findings which led to his dismissal from service. However, the petitioner has not insisted on a Preliminary finding on the question whether the enquiry was done in accordance with the principles of natural justice. The documents on both sides were marked on consent and the petitioner had argued for a final disposal of the case in his favour. In any case it could be seen on going through the documents produced on the side of the Respondent, marked without any objection from the petitioner, that several notices were sent to the petitioner after charge was framed against him for the misconducts allegedly committed by him. Even as admitted by the petitioner in his Claim Statement he had not been attending duty from 01.02.2006. Ext.M9-the charge sheet against him is dated 26.03.2006. It could be seen from Ext.M6, a confidential communication in the Office of the Respondent that proceedings regarding the misconduct allegedly committed by the petitioner have started even in January 2006. The petitioner has stated in the Claim Statement that he was suffering from ill-health and he had applied for continuous leave on medical grounds. However, according to the Respondent petitioner has not applied for leave but was remaining absent unauthorizedly. Since he was absent from office, several notices were sent to the petitioner to his residential address trying to serve the charge memo and notices of the enquiry on him. Exts.M10 to Ext.M16 are all notices sent to the petitioner by the Enquiry Officer returned un-served. There is no case for the petitioner that the address shown in these notices is not his residential address. Thus it could be seen that it is only because the petitioner was not available in the address that was given by him as his residential address at his office and had either shifted his residence or had been absconding, he could be served. Enquiry in the absence of the petitioner was conducted in such circumstance. So the enquiry could not be termed as one conducted against the principles of natural justice.

10. Along with the annexure to the Charge memo a list of witnesses to be examined on the side of the Management are also given. However, the Enquiry Officer had not examined any witnesses as the enquiry had been conducted ex-parte. He had relied upon the documents produced on the side of the Management to enter a finding. He had examined

the Sale Agreement entered into by the petitioner and Kothari Constructions, the receipt given by the petitioner on receiving the cheque for Rs. 70,000/- from Kothari Constructions along with the copy of the cheque and the internal communication showing that the petitioner had not obtained sanction for acquiring immovable property nor for availing loan. The Enquiry Officer had also considered the letter from the Traffic Manager's office stating that the petitioner had not obtained prior approval of the Chairman to purchase the property. After considering these documents the Enquiry Officer has found that the charge other than the one in respect of fraud or dishonesty in connection with the business of property of the Respondent are established. Ext.M19 is the finding of the Traffic Manager, the Disciplinary Authority stating that the misconduct coming under fraud, etc. under Regulation-4(1) also is established. The Disciplinary Authority had found that the petitioner had forged the signature of the then Traffic Manager and also affixed a false seal in the verification certificate and submitted wage slip and form for availing loan. He has found that this is fraud and reversed the finding of the Enquiry Officer that charge under Regulation-4(1) is not proved. After this also communication was sent to the petitioner but he was not available again. It was consequently order of removal of the petitioner from service marked as Ext.M20 was passed by the Disciplinary Authority.

11. Since the petitioner was ex-parte in the enquiry proceedings, enquiry might not have been conducted in an elaborate manner. However, the finding entered into by the Enquiry Officer or the Disciplinary Authority based on the available documents could not be said to be perverse.

12. In fact the schedule of reference does not challenge the finding in the enquiry proceedings as such but is only questioning the removal of the petitioner from service without granting any terminal benefits. In the Claim Statement of course the petitioner has stated that the finding is not correct and is asking for reinstatement also. The petitioner having attained the age of superannuation he wants to be treated as reinstated till the date of retirement and to be paid retirement benefits. However, from the schedule of reference it could not be stated that he has been challenging the order of removal from service but only the order of removal without grant of terminal benefits.

13. In the above background the ultimate question to be considered is whether the punishment that was imposed on the petitioner is in proportion to the offence found proved against him. The counsel for the petitioner has referred to the decision of the Apex Court in the decision in *PALANISWAMY VS. REGIONAL MANAGER, TAMILNADU FOREST PLANTATION CORPORATION LTD.* reported in 2008 6 MLJ 945 in this respect. It was a case where the employee was absent for a long time and was dismissed from service. The Apex Court has found that the absence from duty was for reasons explained and that the employee had even sent a leave application though it did not reach his office. However, the dictum laid down in this is not at all applicable to the facts of the present case. Of course, the petitioner had been absent for a long time from the office. But proceedings against him had not been for his absence but some other misconduct. The counsel had also referred to the decision of the High Court of Madras in *THE MANAGEMENT ASIA TOBACCO CO. LTD. VS. PRESIDING OFFICER, LABOUR COURT, VELLORE* reported in 2006 2 CTC 470. In this case the employee was removed from service on enquiry for theft of 7 cigarettes from the work premises. Applying the principle of proportionality of punishment, the Labour Court had reversed the finding and ordered reinstatement and this was upheld by the High Court. The counsel for the petitioner had been trying to state that the misconduct on the part of the petitioner is trivial and should not have invited a penalty of removal from service. The counsel for the Respondent has pointed out that the misconducts committed by the petitioner are severe in nature and the punishment is not disproportionate to the acts of misconducts proved. The counsel has referred to the decision of the Apex Court in *BHARAT HEAVY ELECTRICALS LTD. VS. CHANDRASEKAR REDDY AND OTHERS* reported in 2005 1 LLJ 865 in this respect. It was a case where the employee had borrowed amount by depositing his title deeds but had stolen the deeds from the Company even while loan instalments were pending and had published notice in a newspaper calling for intending purchasers. The dismissal of the employee in the case has upheld by the Apex Court. The counsel has also referred to the decision in *NEW SHORROCK MILLS VS. MAHESHBHAI T RAO* reported in 1997 1 LLJ 186. It was a case where the employee had threatened the superior officer and he was discharged from service on enquiry. It was held that the punishment awarded is not shocking or disproportionate. Reference was also made to the decision in *GODREJ AND BOYCE MFG. CO. LTD. VS. PRINCIPAL LABOUR COURT, MADRAS* reported in 1996 2 LLN 627 where the employee was dismissed for the offence of forgery. The dismissal of the employee from service was found proportionate to the offence committed.

14. Were the misconducts committed by the petitioner trivial in nature? Was the punishment imposed on him disproportionate to the offences committed by him? The offences found proved against the petitioner are manifold. He had submitted a loan application forging the signature of the superior officer and seal of the office. He had not obtained prior sanction for purchasing the property nor for obtaining the loan. He had inflated the price of the property in collusion with the property developer and had obtained loan amount which is far more than the actual price of the land. His conduct is certainly unbecoming of an employee. His conduct in forging the signature and sending the application for loan by himself as if it is approved by his superior officer shows his lack of integrity. These misconducts on the



part of the petitioner could not be treated as trivial requiring interference in the matter of punishment of removal from service only in which case he will be entitled to termination benefits.

15. The past conducts of the petitioner also disentitle him from interfering with the punishment imposed on him. He seems to have been punished on several occasions earlier also for various misconducts. Ext.M21 includes several proceedings that were initiated against him earlier. Ext.M21, Page-70 dated 09.08.2000 shows that his increment was stopped for six months for indulging in transaction of money and placing himself in the pecuniary obligation. As seen from Page-71 his increment was again stopped for one year for placing himself under pecuniary obligation using his official capacity. As seen from Page-72, by order dated 21.07.2004, for receiving money on the pretext of arranging employment to a private company connected to Port Trust, his pay was reduced by two increments for a period of one year with cumulative effect. As seen from Page-73, by order dated 07.05.2005 he had falsified and forged salary slips for obtaining personal loan from Indian Overseas Bank. He had changed the salary amount in the salary slip for this purpose. His pay was reduced to lower scale in the scale of pay for a period of two years. Thus it could be seen that it is not the first time that the petitioner was resorting to manipulation of the document for the purpose of obtaining loan. His conduct was sufficient for loss of confidence on him on the part of the employer. Thus his past conduct also would show that he is not entitled to any reduction in the punishment.

16. Lastly there is the fact that the petitioner had challenged the order of punishment after 9 years of the order. The dismissal of the petitioner from service is on 29.09.2007. It is surprising that he has not thought of challenging the order till 2016. It could not be that he was not aware of the order till then. True, delay by itself is not a reason for not considering the dispute. However, delay is a factor that can be taken into account in deciding the case.

For all the above reasons I find that the petitioner is not entitled to any relief.

In the result the reference is answered against the petitioner. An Award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 3<sup>rd</sup> April, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

### **Witnesses Examined**

For the 1<sup>st</sup> Party Petitioner : None

For the 2<sup>nd</sup> Party/Respondent : None

### **Documents Marked:**

#### **On the Petitioner's side**

Ext.No.	Date	Description
Ext.W1	21.12.2012	Letter from 2 <sup>nd</sup> Party to 1 <sup>st</sup> Party
Ext.W2	14.02.2014	Removal intimation order from 2 <sup>nd</sup> Party to 1 <sup>st</sup> Party
Ext.W3	29.09.2007	Detailed Removal Order
Ext.W4	28.09.2014	2 <sup>nd</sup> Party letter to ALC (C)
Ext.W5	07.10.2015	1 <sup>st</sup> Party Appeal to 2 <sup>nd</sup> Party Management
Ext.W6	26.10.2015	1 <sup>st</sup> Party letter to Deputy Chairman of 2 <sup>nd</sup> Party
Ext.W7	30.11.2015	Reply letter 2 <sup>nd</sup> Party
Ext.W8	30.12.2015	Report on failure of conciliation proceedings
Ext.W9	31.03.2016	Reference for adjudication from Government of India

#### **On the Respondent's side**

Ext.No.	Date	Description
Ext.M1	28.03.1981	Petitioner Service Book
Ext.M2	12.06.2002	HUDCO Nivas Employment Verification Form along with the petitioner loan application form
Ext.M3	24.06.2002	Petitioner Sale Deed with the Kothari Construction
Ext.M4	16.07.2002	Petitioner letter send to the HUDCO

Ext.M5	22.07.2002	Petitioner letter send to M/s Kothari Construction Ltd. along with cheque
Ext.M6	23.01.2006	C V O letter along with documents
Ext.M7	09.03.2006	Respondent take disciplinary action
Ext.M8	15.03.2006	Respondent internal communication
Ext.M9	26.03.2006	Charge Sheet along with Annexure-I to IV
Ext.M10	01.11.2006	Respondent enquiry notice send to the petitioner along with return Postal Cover and Enquiry Proceedings on 07.11.2006
Ext.M11	10.11.2006	Respondent enquiry notice send to the petitioner along with return Postal Cover and Enquiry Proceedings on 16.11.2006
Ext.M12	17.11.2006	Respondent enquiry notice send to the petitioner along with return Postal Cover and Enquiry Proceedings dated 24.11.2006
Ext.M13	21.02.2007	Respondent enquiry notice send to the petitioner along with return Postal Cover
Ext.M14	23.02.2007	Respondent enquiry notice send to the petitioner along with return Postal Cover
Ext.M15	12.03.2007	Respondent enquiry notice send to the petitioner along with return Postal Cover
Ext.M16	28.03.2007	Respondent enquiry notice send to the petitioner with return Postal Cover
Ext.M17	17.05.2007	Enquiry Officer Report
Ext.M18	27.05.2006	Chief Post Master letter to the Respondent
Ext.M19	30.06.2007	Second Show Cause Notice along with return Postal Cover
Ext.M20	29.09.2007	Removal Order along with return Postal Cover
Ext.M21	09.08.2000 11.09.2002 21.07.2004 07.05.2005 10.05.2006	Respondent memo issued to the petitioner various dates for previous punishments details
Ext.M22	12.02.2014	Petitioner letter send to the Respondent
Ext.M23	14.02.2014	Respondent reply along with removal order dated 29.09.2007
Ext.M24	-	Respondent letter send to the petitioner
Ext.M25	18.02.2014	Petitioner letter send to the Respondent
Ext.M26	25.02.2014	Respondent letter sent to the petitioner
Ext.M27	26.10.2015	Petitioner filed appeal before Respondent
Ext.M28	30.11.2015	Respondent rejected appeal filed by the petitioner
Ext.M29	1987	Chennai Port Trust (Pension) Regulation, 1987
Ext.M30	1987	Madras Port Trust Employees's (Conduct) Regulation 1987
Ext.M31	1988	Madras Port Trust Employees' (Classification, Control and Appeal) Regulations, 1988.

नई दिल्ली, 12 अप्रैल, 2017

**का.आ. 1004.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, ऑल इंडिया इंस्टिट्यूट ऑफ मेडिकल साइंसिस, नई दिल्ली एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 41/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.03.2017 को प्राप्त हुआ था।

[सं. एल-42011/3/2006-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 12th April, 2017

**S.O. 1004.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 41/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. II, New Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Director, All India Institute of Medical Sciences, New Delhi and their workman, which was received by the Central Government on 07.03.2017.

[No. L-42011/3/2006-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

**BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI-110032**

**I.D. No. 41/2016**

Sh. Bachan Singh Rana, S/o Late Sh. Jai Singh Rana,  
R/o H. No. 243, Village Kheda Kala,  
Delhi-82.

#### **Versus**

The Director,  
All India Institute Of Medical Sciences,  
Ansari Road,  
New Delhi-110029.

#### **Ex-parte Award**

Reference No. L-42011/3/2006-IR(DU) was sent to this Tribunal on 6.5.2016 by Ministry of Labour, Govt. Of India, New Delhi. Which received in this Tribunal on 15.06.2016.

Which was register as I.D. No. 41/2016 and notices to parties were issued for filing of claim statement on 22.07.2016.

Claimant/workman appeared on 22.07.2016 and filed his claim statement along with its copy to be supplied to respondent. I fixed 15.09.2016 for written statement.

On 15.09.2016 only workman came but none came on behalf of respondent nor undelivered registered letter containing notice of respondent returned back.

However workman expressed his desire to move an application to presume the service of notice on management. He sought time to move such application.

Hence case was adjourned to 26.09.2016.

On 26.09.2016 workman moved an application to presume service of notice on management before lunch. I called upon report from office after lunch. Which was submitted by office. So I passed detailed order after lunch presuming service of notice on respondent and fixed 19.10.2016 for ex-parte evidence of workman.

On 19.10.2016 workman in his ex-parte evidence tendered his affidavit.

I fixed 21.11.2016 workman expressed his desire to file written arguments hence I fixed 26.12.2016.

But workman has filed his written argument on 22.12.2016. So I reserved the award on 26.12.2016.

According to schedule of reference following questions of determination are to be determined.

1. Whether the action of the management of AIIMS in not issuing the experience certificate to Sh. Bachan Singh Rana for period he has rendered services with the management as Mechanic (AC and refrigeration) on daily wages i.e. January 1995 to August , 2003, is not justified?
2. It so what relief the workman is entitled to and what directions are necessary in this respect?

Inwant of pleadings and evidence of management of AIIMS my question of determination –wise findings are as follows:-

#### **Findings on question of determination No. 1.**

Burden to prove question of determination No. 1 lies on workman.

To prove it he filed his affidavit in his evidence. Which was tendered by him along with copies of documents. None on behalf of management came to cross-examine his versacity. Hence testimony of workman is unrebutted hence reliable and credible. So it comes within the purview of required evidence.

On the basis of which question of determination No. 1 is liable to be decided in favour of workman and against management of AIIMS.

Findings on question of determination No. 2.

Question of determination No.2 relates to relief to workman.

As question of determination No. 1 has already been decided in favour of workman and against management .

Hence question of determination No. 2 which in respect of relief workman is also liable to be decided in favour of workman and workman is entitled for relief of grant of experience certificate as demanded by him from management of AIIMS and management is directed to issue it to workman.

Reference is liable to be decided in favour of workman and against management of AIIMS.

Which is accordingly decided and claim statement is allowed.

Ex-parte Award is here-by passed with direction to management to issue experience certificate to workman within two months after expiry of available remedy against this ex-parte Award.

Dated : 21.2.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 12 अप्रैल, 2017

**का.आ. 1005.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, राष्ट्रीय प्रौद्योगिकी संस्थान, कुरुक्षेत्र एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 51/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.03.2017 को प्राप्त हुआ था।

[सं. एल-42012/100/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 12th April, 2017

**S.O. 1005.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 51/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Director, National Institute of Technology, Kurukshetra and their workman, which was received by the Central Government on 09.03.2017.

[No. L-42012/100/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE**

**BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI-110032**

**I.D. No. 51/2012**

Sh. Praveen Kumar,  
S/o Sh. Mewa Singh,  
R/o:- 1826/8 Amin Road, Sheela Nagar,  
Kurukshetra, Haryana,

**Versus**

The Director,  
National Institute of Technology,  
Kurukshetra

**NO DISPUTE AWARD**

The Central Government in the Ministry of Labour vide Letter No. L-42012/100/2011-IR(DU) Dated 09.01.2012 referred the following Industrial Dispute to this Tribunal for adjudication:-

“Whether the action of management of the Director, National Institute of Technology, Kurukshetra in terminating the services of Shri Parveen Kumar S/o Mewa Singh w.e.f. 27.05.2010, is legal and justified? What relief the workman is entitled to?”

On 08.02.2012 reference was received in this Tribunal. Which was register as I.D. No. 51/2012 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 27.03.2012 workman filed his claim statement. Where-in he prayed as follows:-

“It is therefore prayed that the claim statement of the workman/applicant may please be accepted and the respondent may kindly be directed taken back in service to the applicant with continuity of service and full back wages.

Any other relief which this Hon’ble court deems fit proper may kindly be granted, in the interest of justice.”

On 31.07.2012 management filed written statement. Where-in it prayed as follows:-

“It is therefore, prayed that the present claim statement may please be rejected/dismissed in the interest of justice.”

On 9.10.2012 replication has been filed by workman. Where-in he reaffirmed the contents of claim statement.

On 30.07.2013 following issues were framed:-

- (1) Whether claimant was engaged by the mess committee of National Institute of Technology, Kurushetra, If yes, its effects?
- (2) As in terms of reference?
- (3) Whether there is any relationship of Master and Servant between the claimant and Management?
- (4) Whether the claimant is entitled for the reinstatement in service or not?

And fixed 1.10.2013 for workman evidence.

Several opportunities given to workman to adduce his evidence but he failed to adduce his evidence. Hence his evidence has been closed on 24.08.2016 and case was fixed for management evidence/ arguments.

On 8.2.2017 management not adduced any evidence. So I reserved the award.

I perused the record which shows that workman in support of his case adduced no evidence.

In want of which only “No dispute Award” award can be passed.

Which is accordingly passed.

Dated : 14.2.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 12 अप्रैल, 2017

**का.आ. 1006.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, राष्ट्रीय प्रौद्योगिकी संस्थान, कुरुक्षेत्र एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 72/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.03.2017 को प्राप्त हुआ था।

[सं. एल-42012/41/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 12th April, 2017

**S.O. 1006.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 72/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Director, National Institute of Technology, Kurukshetra and their workman, which was received by the Central Government on 09.03.2017.

[No. L-42012/41/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE****BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI-110032****I.D. No. 72/2011**

Sh. Kuldeep Singh  
S/o Sh. Mahinder Singh,  
Vill.- Dayalpur, PO- Gurukul  
Kurukshetra

**Versus**

The Director,  
National Institute of Technology,  
Kurukshetra.

**NO DISPUTE AWARD**

The Central Government in the Ministry of Labour vide Letter No. L-42012/41/2011-IR(DU) Dated 13.09.2011 referred the following Industrial Dispute to this Tribunal for adjudication:-

“Whether the action of management of the Director, National Institute of Technology, Kurukshetra in terminating the services of Shri Kuldeep Singh S/o Mahinder Singh w.e.f. 27.05.2010, is legal and justified? What relief the workman is entitled to?”

On 20.10.2011 reference was received in this Tribunal. Which was register as I.D. No. 72/2011 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 13.12.2011 workman filed his claim statement. Where-in he prayed as follows:-

“It is therefore prayed that the claim statement of the workman/applicant may please be accepted and the respondent may kindly be directed taken back in service to the applicant with continuity of service and full back wages.

Any other relief which this Hon’ble court deems fit proper may kindly be granted, in the interest of justice.”

On 24.04.2012 management filed written statement. Where-in he prayed as follows:-

“It is therefore, prayed that the present claim statement may please be rejected/dismissed in the interest of justice.”

On 12.06.2012 workman filed rejoinder. Where-in he re-affirmed the contents of claim statement.

On 16.04.2013 following issues were framed:-

- (1) Whether claimant was engaged by the mess committee of National Institute of Technology, Kurukshetra, If yes, its effects.
- (2) As in terms of reference?

Fixed 04.06.2013 for workman evidence.

Several opportunities given to workman to adduce his evidence but he failed to adduce his evidence. Hence his evidence has been closed on 24.08.2016 and case was fixed for management evidence/ arguments.

On 8.2.2017 management not adduced any evidence. So I reserved the award.

I perused the record which shows that workman in support of his case adduced no evidence.

In want of which only “No dispute Award” award can be passed.

Which is accordingly passed.

Dated : 14.2.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 12 अप्रैल, 2017

**का.आ. 1007.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, राष्ट्रीय प्रौद्योगिकी संस्थान, कुरुक्षेत्र एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट

औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 76/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.03.2017 को प्राप्त हुआ था।

[सं. एल-42012/45/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 12th April, 2017

**S.O. 1007.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 76/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Director, National Institute of Technology, Kurukshetra and their workman, which was received by the Central Government on 09.03.2017.

[No. L-42012/45/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### **ANNEXURE**

**BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI-110032**

**I.D. No. 76/2011**

Sh. Jasvinder  
S/o Sh. Multan Singh,  
Vill.- Dayalpur, PO- Gurukul  
Kurukshetra

#### **Versus**

The Director,  
National Institute of Technology,  
Kurukshetra.

#### **NO DISPUTE AWARD**

The Central Government in the Ministry of Labour vide Letter No. L-42012/45/2011-IR(DU) Dated 13.09.2011 referred the following Industrial Dispute to this Tribunal for adjudication:-

“Whether the action of management of the Director, National Institute of Technology, Kurukshetra in terminating the services of Shri Jasvinder S/o Multan Singh w.e.f. 27.05.2010, is legal and justified? What relief the workman is entitled to?”

On 29.09.2011 reference was received in this Tribunal. Which was register as I.D. No. 76/2011 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 13.12.2011 workman filed his claim statement. Where-in he prayed as follows:-

“It is therefore prayed that the claim statement of the workman/applicant may please be accepted and the respondent may kindly be directed taken back in service to the applicant with continuity of service and full back wages.

Any other relief which this Hon’ble court deems fit proper may kindly be granted, in the interest of justice.”

On 24.04.2012 management filed written statement. Where-in he prayed as follows:-

“It is therefore, prayed that the present claim statement may please be rejected/dismissed in the interest of justice.”

On 12.06.2012 workman filed rejoinder. Where-in he re-affirmed the contents of claim statement.

On 16.04.2013 following issues were framed:-

- (1) Whether claimant was engaged by the mess committee of National Institute of Technology, Kurushetra, If yes, its effects.
- (2) As in terms of reference?

Fixed 04.06.2013 for workman evidence.

Several opportunities given to workman to adduce his evidence but he failed to adduce his evidence. Hence his evidence has been closed on 24.08.2016 and case was fixed for management evidence/ arguments.

On 8.2.2017 management not adduced any evidence. So I reserved the award.

I perused the record which shows that workman in support of his case adduced no evidence.

In want of which only “No dispute Award” award can be passed.

Which is accordingly passed.

Dated : 14.2.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 12 अप्रैल, 2017

**का.आ. 1008.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, राष्ट्रीय प्रौद्योगिकी संस्थान, कुरुक्षेत्र एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 80/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.03.2017 को प्राप्त हुआ था।

[सं. एल-42012/49/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 12th April, 2017

**S.O. 1008.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 80/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Director, National Institute of Technology, Kurukshetra and their workman, which was received by the Central Government on 09.03.2017.

[No. L-42012/49/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

**BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI-110032**

**I.D. No. 80/2011**

Sh. Sube Singh  
S/o Sh. Baru Ram,  
Vill.- Hathira, PO- Hathira  
Kurukshetra

#### **Versus**

The Director,  
National Institute of Technology,  
Kurukshetra.

#### **NO DISPUTE AWARD**

The Central Government in the Ministry of Labour vide Letter No. L-42012/49/2011-IR(DU) Dated 13.09.2011 referred the following Industrial Dispute to this Tribunal for adjudication:-

“Whether the action of management of the Director, National Institute of Technology, Kurukshetra in terminating the services of Shri Sube Singh S/o Shri Baru Ram w.e.f 27.05.2010, is legal and justified? What relief the workman is entitled to?”

On 29.09.2011 reference was received in this Tribunal. Which was register as I.D. No. 80/2011 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 13.12.2011 workman filed his claim statement. Where-in he prayed as follows:-

“It is therefore prayed that the claim statement of the workman/applicant may please be accepted and the respondent may kindly be directed taken back in service to the applicant with continuity of service and full back wages.

Any other relief which this Hon’ble court deems fit proper may kindly be granted, in the interest of justice.”



On 24.04.2012 management filed written statement. Where-in he prayed as follows:-

“It is therefore, prayed that the present claim statement may please be rejected/dismissed in the interest of justice.”

On 12.06.2012 workman filed rejoinder. Where-in he reaffirmed the contents of claim statement.

On 16.04.2013 following issues were framed:-

- (1) Whether claimant was engaged by the mess committee of National Institute of Technology, Kurushetra, If yes, its effects.
- (2) As in terms of reference?

Fixed 04.06.2013 for workman evidence.

Several opportunities given to workman to adduce his evidence but he failed to adduce his evidence. Hence his evidence has been closed on 24.08.2016 and case was fixed for management evidence/ arguments.

On 8.2.2017 management not adduced any evidence. So I reserved the award.

I perused the record which shows that workman in support of his case adduced no evidence.

In want of which only “No dispute Award” award can be passed.

Which is accordingly passed.

Dated : 14.2.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 12 अप्रैल, 2017

**का.आ. 1009.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कार्यकारी अभियंता (चुनाव), सीपीडब्ल्यूडी, गाजियाबाद, उत्तर प्रदेश एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 100/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.03.2017 को प्राप्त हुआ था।

[सं. एल-42011/70/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 12th April, 2017

**S.O. 1009.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 100/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Executive Engineer (Elect.), CPWD, Ghaziabad, Uttar Pradesh and their workman, which was received by the Central Government on 09.03.2017.

[No. L-42011/70/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

**BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO-II, KARKARDOMA COURT COMPLEX, DELHI-110032**

**I.D. No. 100/2011**

Sh. Mahender Singh (The Joint Secretary)  
All India CPWD (MRM) Karamchari Sangathan,  
House No. 4823, Gali No.-13, Balbir Nagar Extn.,  
Sahadra, Delhi 110032

#### Versus

The Executive Engineer (Elect.),  
CPWD, Hindon Electrical Central Division  
Hindon Air Field, Hindon  
Ghaziabad (U.P.)

**AWARD**

The Central Government in the the Ministry of Labour vide Letter No. L-42011/70/2011-IR(DU) Dated 10.10.2011 referred the following Industrial Dispute to this Tribunal for adjudication:-

“Whether the workman Shri Mahender Singh, Khalasi S/o Shri Lakhi is entitled to be granted promotional payscale of Rs. 950-1500 w.e.f. 01.04.1991 instead of Rs. 800-1100 under insitu promotion scheme along with all consequential benefits as well as under IInd ACP Scheme and MACP Scheme of 6<sup>th</sup> pay commission? What relief the workman is entitled to?”

On 11.11.2011 reference was received in this Tribunal. Which was register as I.D. No. 100/2011 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 19.06.2013 claim statement along with documents has been filed by workman. Through which workman prayed as follows:-

“In view of the above facts and circumstances of the case, the workmen most humbly and respectfully prays for the following among other relief:

- i) To pass an award to grant the pay scale of Rs. 950-1500 to Shri Mahender Singh, Khalasi (Retired) w.e.f. 01.04.1991 under In-Situ promotion with all consequential benefits.
- ii) To pass an award to grant the pay scale of Rs. 4000-6000 under ACP Scheme w.e.f. 9.8.1999 on completion of 24 years of service and pay band of Rs. 5200-20200 with grate pay of Rs. 2800/- under MACP scheme w.e.f. 1.9.2008 on completion of 30 years service.
- iii) Any other relief which may kindly be deemed fit and proper to meet end of justice.

Anaist Claim statement management filed its written statement on 2.8.2013. Where-in management prayed as follows:-

“It is therefore most respectfully prayed that this Hon’ble court may graciously be pleased to dismiss the petition as the workman is not entitled for any relief as claimed in this petition.”

On 17.10.2013 on the basis of pleadings of the parties I framed following issues:-

1. Whether the workman Shri Mahender Singh, Khalasi S/o Shri Lakhi is entitled to be granted promotional payscale of Rs. 950-1500 w.e.f. 01.04.1991 instead of Rs. 800-1100 under insitu promotion scheme along with all consequential benefits as well as under IInd ACP Scheme and MACP Scheme of 6<sup>th</sup> pay commission?
2. What relief the workman is entitled to?

Fixed 3.12.2013 for workman evidence.

On 12.6.2014 workman filed affidavit in his evidence along with its copy to be furnished to management. Fixed 7.8.2014 for tendering of affidavit and cross-examination of workman.

Workman tendered his affidavit along with certain documents which are Ex. WW1/1 to WW1/6 on 27.01.2015.

On 16.7.2015 workman Sh. Mahender Singh S/o Sh. Lakhi was cross-examined on fresh oath by Sh. Satish Kumar Sharma Office Superintendent for management and his cross-examination is concluded. Fixed 24.8.2015 for management evidence.

On 10.03.2016 management witness Sh. G.D Rajpali aged 59 years S/o Late Sh. Moti Lal Rajpali working as Executive Engineer (E), H.C.E.D, C.P.W.D H.A.F, Hindon was tender his affidavit along with documents Ex. MW1/1 to Ex MW1/2 in his evidence. He was cross-examined on same day by Sh. Satish Kumar Sharma Ld. A/R for workman. His cross-examination is as follows:-

“It is correct the workman Sh. Mahender Singh was appointed as khalasi on 10.05.1972.

It is also correct the workman was superannuated from the service as khalasi on 31.07.2012.

It is correct that the workman was granted INSITU promotion w.e.f. 01.04.1991 in the pay scale of Rs.800-1150.

It is correct INSITU promotion granted to the workman in accordance DOPT order dated 13.09.1991. This is Ex WW1/1. The workman not passed trade test during the service period.

It is correct the pay scale was granted to the workman is equal to the semi-skill pay scale.

It is correct that the Assistant Category was merged with the main category w.e.f. 1.1.1973 on account of implementation of arbitration award 1988. DGW, CPWD had issued the order on 7.5.1997 for revision of pay scale such workman and payment of arrears w.e.f. 1.4.1981. The order is already Ex WW1/2.

It is correct that the letter dated 27.1.2010 issued by the Superintendant Engineer, Electrical coordination circle CPWD regarding the detail of funds.

It is correct categorization workman of CPWD and promotion are governed by CPWD manual volume III and amendment time to time.”

On 26.04.2016 workman filed his written argument.

On 17.10.2016 management filed its written argument.

I reserved Award on 23.11.2016.

I clarified certain fact than Ld. A/R for workman made clarification through additional written arguments. Copy of which supplied to management but no reply on behalf of management against additional written argument filed. Case was again reserved for Award on 26.12.2016.

I have perused the pleadings of parties including their evidence as well as contents of written arguments of both parties to pass reserved Award.

My issuewise finding is as follows:-

#### **Finding on Issue No.1-**

It is relevant to mention here that burden to prove issue No. 1 lies on workman.

To discharge his burden workman adduced his evidence.

He was cross examined at length but nothing could be extracted out in his cross-examination by Ld. A/R for management. So his testimony comes within the category of required evidence as well as reliable and credible evidence.

Moreover management in rebuttal produced its witness MW1 Sh. G. D. Rajpali who admitted certain facts favourable to workman.

Which has been mentioned above

On the basis of aforesaid discussion I am of considered view that issue No.1 is liable to be decided in favour of workman and against management of CPWD. Which is accordingly decided.

#### **Finding on Issues No. 2**

Which is in respect of entitlement of relief.

To decide it I perused the pleadings of claim statement along with reliefs claimed by workman as well as pleadings of management including evidence of parties and my finding on issue No. 1.

Which shows that on the basis of required, credible and reliable evidence of workman I have decided the issue No.1 in favour of workman and against management of CPWD.

So issue No.2 is also liable to be decided in favour of workman and against management of CPWD.

Which is according decided and following reliefs to workman sh. Mahender Singh are granted:-

- (1) Pay scale of Rs. 950-1500 to Shri Mahender Singh, Khalasi (Retired) w.e.f. 01.04.1991 under In-Situ promotion with all consequential benefits.
- (2) Pay scale of Rs. 4000-6000 under ACP Scheme w.e.f. 9.8.1999 on completion of 24 years of service and pay band of Rs. 5200-20200 with grate pay of Rs. 2800/- under MACP scheme w.e.f. 1.9.2008 on completion of 30 years service.

On the basis of aforesaid discussion I am of considered view that reference is liable to be decided in favour of workman and against management and claim statement is liable to be allowed. Which is accordingly to decided.

Management is directed to grant aforesaid reliefs to workman within two months after expiry of available remedy against this Award.

Award is accordingly passed.

Dated : 08.02.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 12 अप्रैल, 2017

**का.आ. 1010.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कार्यकारी अभियंता (चुनाव), सीपीडब्ल्यूडी, गाजियाबाद, उत्तर प्रदेश एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 101/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.03.2017 को प्राप्त हुआ था।

[सं. एल-42011/71/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 12th April, 2017

**S.O. 1010.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 101/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Executive Engineer (Elect.), CPWD, Ghaziabad, Uttar Pradesh and their workman, which was received by the Central Government on 09.03.2017.

[No. L-42011/71/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

**BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No.-II, KARKARDOOMA COURT COMPLEX, DELHI-110032**

**I.D. No. 101/2011**

Sh. Om Prakash (The Joint Secretary)  
All India CPWD (MRM) Karamchari Sangathan,  
House No. 4823, Gali No.-13, Balbir Nagar Extn.,  
Sahadra, Delhi 110032

#### Versus

The Executive Engineer (Elect.),  
CPWD, Hindon Electrical Central Division  
Hindon Air Field, Hindon  
Ghaziabad (U.P.)

#### AWARD

The Central Government in the the Ministry of Labour vide Letter No. L-42011/71/2011-IR(DU) Dated 10.10.2011 referred the following Industrial Dispute to this Tribunal for adjudication:-

“Whether the workman Shri Om Prakash, Khalasi S/o Shri Lakhi is entitled to be granted promotional payscale of Rs. 950-1500 w.e.f. 01.04.1991 instead of Rs. 800-1100 under insitu promotion scheme along with all consequential benefits as well as under IInd ACP Scheme and MACP Scheme of 6<sup>th</sup> pay commission? What relief the workman is entitled to?”

On 11.11.2011 reference was received in this Tribunal. Which was register as I.D. No. 101/2011 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 19.06.2013 claim statement along with documents has been filed by workman. Through which workman prayed as follows:-

“In view of the above facts and circumstances of the case, the workmen most humbly and respectfully prays for the following among other relief:

- i) To pass an award to grant the pay scale of Rs. 950-1500 to Shri Om Prakash, Khalasi (Retired) w.e.f. 01.04.1991 under In-Situ promotion with all consequential benefits.
- ii) To pass an award to grant the pay scale of Rs. 4000-6000 under ACP Scheme w.e.f. 9.8.1999 on completion of 24 years of service and pay band of Rs. 5200-20200 with grate pay of Rs. 2800/- under MACP scheme w.e.f. 1.9.2008 on completion of 30 years service.
- iii) Any other relief which may kindly be deemed fit and proper to meet end of justice.

Against Claim statement management filed its written statement on 2.8.2013. Where-in management prayed as follows:-

“It is therefore most respectfully prayed that this Hon’ble court may graciously be pleased to dismiss the petition as the workman is not entitled for any relief as claimed in this petition.”

On 17.10.2013 on the basis of pleadings of the parties I framed following issues:-

1. Whether the workman Shri Om Prakash, Khalasi is entitled to be granted promotional payscale of Rs. 950-1500 w.e.f. 01.04.1991 instead of Rs. 800-1100 under insitu promotion scheme along with all consequential benefits as well as under IInd ACP Scheme and MACP Scheme of 6<sup>th</sup> pay commission?
2. What relief the workman is entitled to?

Fixed 3.12.2013 for workman evidence.

On 12.6.2014 workman filed affidavit in his evidence along with its copy to be furnished to management. Fixed 7.8.2014 for tendering of affidavit and cross-examination of workman.

Workman tendered his affidavit along with certain documents which are Ex. WW1/1 to WW1/6 on 27.01.2015.

On 16.7.2015 workman Sh. Om Prakash was cross-examined on fresh oath by Sh. Satish Kumar Sharma Office Superintendent for management and his cross-examination is concluded. Fixed 24.8.2015 for management evidence.

On 10.03.2016 management witness Sh. G.D. Rajpali aged 59 years S/o Late Sh. Moti Lal Rajpali working as Executive Engineer (E), H.C.E.D, C.P.W.D H.A.F, Hindon was tender his affidavit along with documents Ex. MW1/1 to Ex MW1/2 in his evidence. He was cross-examined on same day by Sh. Satish Kumar Sharma Ld. A/R for workman. His cross-examination is as follows:-

“It is correct the workman Sh. Om Prakash was appointed as khalasi on 10.05.1972.

It is also correct the workman was superannuated from the service as khalasi on 31.07.2012.

It is correct that the workman was granted INSITU promotion w.e.f. 01.04.1991 in the pay scale of Rs.800-1150.

It is correct INSITU promotion granted to the workman in accordance DOPT order dated 13.09.1991. This is Ex WW1/1. The workman not passed trade test during the service period.

It is correct the pay scale was granted to the workman is equal to the semi-skill pay scale.

It is correct that the Assistant Category was merged with the main category w.e.f. 1.1.1973 on account of implementation of arbitration award 1988. DGW, CPWD had issued the order on 7.5.1997 for revision of pay scale such workman and payment of arrears w.e.f. 1.4.1981. The order is already Ex WW1/2.

It is correct that the letter dated 27.1.2010 issued by the Superintendant Engineer, Electrical coordination circle CPWD regarding the detail of funds.

It is correct categorization workman of CPWD and promotion are governed by CPWD manual volume III and amendment time to time.”

On 26.04.2016 workman filed his written argument.

On 17.10.2016 management filed its written argument.

I reserved Award on 23.11.2016.

I clarified certain fact than Ld. A/R for workman made clarification through additional written arguments. Copy of which supplied to management but no reply on behalf of management against additional written argument filed. Case was again reserved for Award on 26.12.2016.

I have perused the pleadings of parties including their evidence as well as contents of written arguments of both parties to pass reserved Award.

My issuewise finding is as follows:-

#### **Finding on Issue No.1-**

It is relevant to mention here that burden to prove issue No. 1 lies on workman.

To discharge his burden workman adduced his evidence.

He was cross examined at length but nothing could be extracted out in his cross-examination by Ld. A/R for management. So his testimony comes within the category of required evidence as well as reliable and credible evidence.

Moreover management in rebuttal produced its witness MW1 Sh. G. D. Rajpali who admitted certain facts favourable to workman.

Which has been mentioned above

On the basis of aforesaid discussion I am of considered view that issue No.1 is liable to be decided in favour of workman and against management of CPWD. Which is accordingly decided.

### **Finding on Issues No. 2**

Which is in respect of entitlement of relief.

To decide it I perused the pleadings of claim statement along with reliefs claimed by workman as well as pleadings of management including evidence of parties and my finding on issue No. 1.

Which shows that on the basis of required, credible and reliable evidence of workman I have decided the issue No.1 in favour of workman and against management of CPWD.

So issue No.2 is also liable to be decided in favour of workman and against management of CPWD.

Which is according decided and following reliefs to workman sh. Om Prakash are granted:-

- (1) Pay scale of Rs. 950-1500 to Shri Om Prakash, Khalasi (Retired) w.e.f. 01.04.1991 under In-Situ promotion with all consequential benefits.
- (2) Pay scale of Rs. 4000-6000 under ACP Scheme w.e.f. 9.8.1999 on completion of 24 years of service and pay band of Rs. 5200-20200 with grate pay of Rs. 2800/- under MACP scheme w.e.f. 1.9.2008 on completion of 30 years service.

On the basis of aforesaid discussion I am of considered view that reference is liable to be decided in favour of workman and against management and claim statement is liable to be allowed. Which is accordingly to decided.

Management is directed to grant aforesaid reliefs to workman within two months after expiry of available remedy against this Award.

Award is accordingly passed.

Dated : 08.02.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 12 अप्रैल, 2017

**का.आ. 1011.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कार्यकारी अभियंता (चुनाव), सीपीडब्ल्यूडी, गाजियाबाद, उत्तर प्रदेश एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 102/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.03.2017 को प्राप्त हुआ था।

[सं. एल-42011/73/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 12th April, 2017

**S.O. 1011.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 102/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Executive Engineer (Elect.), CPWD, Ghaziabad, Uttar Pradesh and their workman, which was received by the Central Government on 09.03.2017.

[No. L-42011/73/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE****BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI-110032****I.D. No. 102/2011**

Sh. Mahender Singh (The Joint Secretary)  
All India CPWD (MRM) Karamchari Sangathan,  
House No. 4823, Gali No.-13, Balbir Nagar Extn.,  
Sahadra, Delhi 110032

**Versus**

The Executive Engineer (Elect.),  
CPWD, Hindon Electrical Central Division  
Hindon Air Field, Hindon  
Ghaziabad (U.P.)

**AWARD**

The Central Government in the the Ministry of Labour vide Letter No. L-42011/73/2011-IR(DU) Dated 10.10.2011 referred the following Industrial Dispute to this Tribunal for adjudication:-

“Whether the workman Shri Mahender Singh, Khalasi S/o Shri Tek Chand is entitled to be granted promotional payscale of Rs. 950-1500 w.e.f. 01.04.1991 instead of Rs. 800-1100 under insitu promotion scheme along with all consequential benefits as well as under IInd ACP Scheme and MACP Scheme of 6<sup>th</sup> pay commission? What relief the workman is entitled to?”

On 11.11.2011 reference was received in this Tribunal. Which was register as I.D. No. 102/2011 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 19.06.2013 claim statement along with documents has been filed by workman. Through which workman prayed as follows:-

“In view of the above facts and circumstances of the case, the workmen most humbly and respectfully prays for the following among other relief:

- i) To pass an award to grant the pay scale of Rs. 950-1500 to Shri Mahender Singh, Khalasi (Retired) w.e.f. 01.04.1991 under In-Situ promotion with all consequential benefits.
- ii) To pass an award to grant the pay scale of Rs. 4000-6000 under ACP Scheme w.e.f. 9.8.1999 on completion of 24 years of service and pay band of Rs. 5200-20200 with grate pay of Rs. 2800/- under MACP scheme w.e.f. 1.9.2008 on completion of 30 years service.
- iii) Any other relief which may kindly be deemed fit and proper to meet end of justice.

Against Claim statement management filed its written statement on 2.8.2013. Wherein management prayed as follows:-

“It is therefore most respectfully prayed that this Hon’ble court may graciously be pleased to dismiss the petition as the workman is not entitled for any relief as claimed in this petition.”

On 17.10.2013 on the basis of pleadings of the parties I framed following issues:-

1. Whether the workman Shri Mahender Singh, Khalasi S/o Shri Tek Chand is entitled to be granted promotional payscale of Rs. 950-1500 w.e.f. 01.04.1991 instead of Rs. 800-1100 under in situ promotion scheme along with all consequential benefits as well as under IInd ACP Scheme and MACP Scheme of 6<sup>th</sup> pay commission?
2. What relief the workman is entitled to?

Fixed 3.12.2013 for workman evidence.

On 12.6.2014 workman filed affidavit in his evidence along with its copy to be furnished to management. Fixed 7.8.2014 for tendering of affidavit and cross-examination of workman.

Workman tendered his affidavit along with certain documents which are Ex. WW1/1 to WW1/6 on 27.01.2015.

On 16.7.2015 workman Sh. Mahender Singh S/o Sh. Tek Chand was cross-examined on fresh oath by Sh. Satish Kumar Sharma Office Superintendent for management and his cross-examination is concluded. Fixed 24.8.2015 for management evidence.

On 10.03.2016 management witness Sh. G.D Rajpali aged 59 years S/o Late Sh. Moti Lal Rajpali working as Executive Engineer (E), H.C.E.D, C.P.W.D H.A.F, Hindon was tender his affidavit along with documents Ex. MW1/1 to Ex MW1/2 in his evidence. He was cross-examined on same day by Sh. Satish Kumar Sharma Ld. A/R for workman. His cross-examination is as follows:-

“It is correct the workman Sh. Mahender Singh was appointed as khalasi on 10.05.1972.

It is also correct the workman was superannuated from the service as khalasi on 31.07.2012.

It is correct that the workman was granted INSITU promotion w.e.f. 01.04.1991 in the pay scale of Rs. 800-1150.

It is correct INSITU promotion granted to the workman in accordance DOPT order dated 13.09.1991. This is Ex WW1/1. The workman not passed trade test during the service period.

It is correct the pay scale was granted to the workman is equal to the semi-skill pay scale.

It is correct that the Assistant Category was merged with the main category w.e.f. 1.1.1973 on account of implementation of arbitration award 1988. DGW, CPWD had issued the order on 7.5.1997 for revision of pay scale such workman and payment of arrears w.e.f. 1.4.1981. The order is already Ex WW1/2.

It is correct that the letter dated 27.1.2010 issued by the Superintendant Engineer, Electrical coordination circle CPWD regarding the detail of funds.

It is correct categorization workman of CPWD and promotion are governed by CPWD manual volume III and amendment time to time.”

On 26.04.2016 workman filed his written argument.

On 17.10.2016 management filed its written argument.

I reserved Award on 23.11.2016.

I clarified certain fact than Ld. A/R for workman made clarification through additional written arguments. Copy of which supplied to management but no reply on behalf of management against additional written argument filed. Case was again reserved for Award on 26.12.2016.

I have perused the pleadings of parties including their evidence as well as contents of written arguments of both parties to pass reserved Award.

My issuewise finding is as follows:-

#### **Finding on Issue No.1-**

It is relevant to mention here that burden to prove issue No. 1 lies on workman.

To discharge his burden workman adduced his evidence.

He was cross-examined at length but nothing could be extracted out in his cross-examination by Ld. A/R for management. So his testimony comes within the category of required evidence as well as reliable and credible evidence.

Moreover management in rebuttal produced its witness MW1 Sh. G. D. Rajpali who admitted certain facts favourable to workman.

Which has been mentioned above

On the basis of aforesaid discussion I am of considered view that issue No.1 is liable to be decided in favour of workman and against management of CPWD. Which is accordingly decided.

#### **Finding on Issues No. 2**

Which is in respect of entitlement of relief.

To decide it I perused the pleadings of claim statement along with reliefs claimed by workman as well as pleadings of management including evidence of parties and my finding on Issue No. 1.

Which shows that on the basis of required, credible and reliable evidence of workman I have decided the Issue No.1 in favour of workman and against management of CPWD.



So Issue No. 2 is also liable to be decided in favour of workman and against management of CPWD.

Which is according decided and following reliefs to workman sh. Mahender Singh are granted:-

- (1) Pay scale of Rs. 950-1500 to Shri Mahender Singh, Khalasi (Retired) w.e.f. 01.04.1991 under In-Situ promotion with all consequential benefits.
- (2) Pay scale of Rs. 4000-6000 under ACP Scheme w.e.f. 9.8.1999 on completion of 24 years of service and pay band of Rs. 5200-20200 with grate pay of Rs. 2800/- under MACP scheme w.e.f. 1.9.2008 on completion of 30 years service.

On the basis of aforesaid discussion I am of considered view that reference is liable to be decided in favour of workman and against management and claim statement is liable to be allowed. Which is accordingly to be decided.

Management is directed to grant aforesaid reliefs to workman within two months after expiry of available remedy against this Award.

Award is accordingly passed.

Dated : 08.02.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 12 अप्रैल, 2017

**का.आ. 1012.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कार्यकारी अभियंता (चुनाव), सीपीडब्ल्यूडी, गाजियाबाद, उत्तर प्रदेश एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 103/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.03.2017 को प्राप्त हुआ था।

[सं. एल-42011/74/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 12th April, 2017

**S.O. 1012.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 103/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Executive Engineer (Elect.), CPWD, Ghaziabad, Uttar Pradesh and their workman, which was received by the Central Government on 09.03.2017.

[No. L-42011/74/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

**BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI-110032**

**I.D. No. 103/2011**

Sh. Girvar Singh (The Joint Secretary)  
All India CPWD (MRM) Karamchari Sangathan,  
House No. 4823, Gali No.-13, Balbir Nagar Extn.,  
Sahadra, Delhi 110032

#### Versus

The Executive Engineer (Elect.),  
CPWD, Hindon Electrical Central Division  
Hindon Air Field, Hindon  
Ghaziabad (U.P.)

#### AWARD

The Central Government in the the Ministry of Labour vide Letter No. L-42011/74/2011-IR(DU) Dated 10.10.2011 referred the following Industrial Dispute to this Tribunal for adjudication:-

“Whether the workman Shri Girvar Singh, is entitled to be granted promotional payscale of Rs. 950-1500 w.e.f. 01.04.1991 instead of Rs. 800-1100 under insitu promotion scheme along with all consequential benefits as well as under IInd ACP Scheme and MACP Scheme of 6<sup>th</sup> pay commission? What relief the workman is entitled to?”

On 11.11.2011 reference was received in this Tribunal. Which was register as I.D. No. 103/2011 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 19.06.2013 claim statement along with documents has been filed by workman. Through which workman prayed as follows:-

“In view of the above facts and circumstances of the case, the workmen most humbly and respectfully prays for the following among other relief:

- i) To pass an award to grant the pay scale of Rs. 950-1500 to Shri Girvar Singh, Khalasi (Retired) w.e.f. 01.04.1991 under In-Situ promotion with all consequential benefits.
- ii) To pass an award to grant the pay scale of Rs. 4000-6000 under ACP Scheme w.e.f. 9.8.1999 on completion of 24 years of service and pay band of Rs. 5200-20200 with grate pay of Rs. 2800/- under MACP scheme w.e.f. 1.9.2008 on completion of 30 years service.
- iii) Any other relief which may kindly be deemed fit and proper to meet end of justice.

Anaist Claim statement management filed its written statement on 2.8.2013. Wherein management prayed as follows:-

“It is therefore most respectfully prayed that this Hon’ble court may graciously be pleased to dismiss the petition as the workman is not entitled for any relief as claimed in this petition.”

On 17.10.2013 on the basis of pleadings of the parties I framed following issues:-

1. Whether the workman Shri Girvar Singh, Khalasi is entitled to be granted promotional payscale of Rs. 950-1500 w.e.f. 01.04.1991 instead of Rs. 800-1100 under in situ promotion scheme along with all consequential benefits as well as under IInd ACP Scheme and MACP Scheme of 6<sup>th</sup> pay commission?
2. What relief the workman is entitled to?

Fixed 3.12.2013 for workman evidence.

On 12.6.2014 workman filed affidavit in his evidence along with its copy to be furnished to management. Fixed 7.8.2014 for tendering of affidavit and cross-examination of workman.

Workman tendered his affidavit along with certain documents which are Ex. WW1/1 to WW1/6 on 27.01.2015.

On 16.7.2015 workman Sh. Girvar Singh was cross-examined on fresh oath by Sh. Satish Kumar Sharma Office Superintendent for management and his cross-examination is concluded. Fixed 24.8.2015 for management evidence.

On 10.03.2016 management witness Sh. G.D Rajpali aged 59 years S/o Late Sh. Moti Lal Rajpali working as Executive Engineer (E), H.C.E.D, C.P.W.D H.A.F, Hindon was tender his affidavit along with documents Ex. MW1/1 to Ex MW1/2 in his evidence. He was cross-examined on same day by Sh. Satish Kumar Sharma Ld. A/R for workman. His cross-examination is as follows:-

“It is correct the workman Sh. Girvar Singh was appointed as khalasi on 10.05.1972.

It is also correct the workman was superannuated from the service as khalasi on 31.07.2012.

It is correct that the workman was granted INSITU promotion w.e.f. 01.04.1991 in the pay scale of Rs.800-1150.

It is correct INSITU promotion granted to the workman in accordance DOPT order dated 13.09.1991. This is Ex WW1/1. The workman not passed trade test during the service period.

It is correct the pay scale was granted to the workman is equal to the semi-skill pay scale.

It is correct that the Assistant Category was merged with the main category w.e.f. 1.1.1973 on account of implementation of arbitration award 1988. DGW, CPWD had issued the order on 7.5.1997 for revision of pay scale such workman and payment of arrears w.e.f. 1.4.1981. The order is already Ex WW1/2.

It is correct that the letter dated 27.1.2010 issued by the Superintendant Engineer, Electrical coordination circle CPWD regarding the detail of funds.

It is correct categorization workman of CPWD and promotion are governed by CPWD manual volume III and amendment time to time.”

On 26.04.2016 workman filed his written argument.

On 17.10.2016 management filed its written argument.

I reserved Award on 23.11.2016.

I clarified certain fact than Ld. A/R for workman made clarification through additional written arguments. Copy of which supplied to management but no reply on behalf of management against additional written argument filed. Case was again reserved for Award on 26.12.2016.

I have perused the pleadings of parties including their evidence as well as contents of written arguments of both parties to pass reserved Award.

My issuewise finding is as follows:-

**Finding on Issue No.1-**

It is relevant to mention here that burden to prove Issue No. 1 lies on workman.

To discharge his burden workman adduced his evidence.

He was cross-examined at length but nothing could be extracted out in his cross-examination by Ld. A/R for management. So his testimony comes within the category of required evidence as well as reliable and credible evidence.

Moreover management in rebuttal produced its witness MW1 Sh. G. D. Rajpali who admitted certain facts favourable to workman.

Which has been mentioned above

On the basis of aforesaid discussion I am of considered view that Issue No.1 is liable to be decided in favour of workman and against management of CPWD. Which is accordingly decided.

**Finding on Issues No. 2**

Which is in respect of entitlement of relief.

To decide it I perused the pleadings of claim statement along with reliefs claimed by workman as well as pleadings of management including evidence of parties and my finding on Issue No. 1.

Which shows that on the basis of required, credible and reliable evidence of workman I have decided the Issue No.1 in favour of workman and against management of CPWD.

So Issue No.2 is also liable to be decided in favour of workman and against management of CPWD.

Which is according decided and following reliefs to workman sh. Girvar Singh are granted:-

- (1) Pay scale of Rs. 950-1500 to Shri Girvar Singh, Khalasi (Retired) w.e.f. 01.04.1991 under In-Situ promotion with all consequential benefits.
- (2) Pay scale of Rs. 4000-6000 under ACP Scheme w.e.f. 9.8.1999 on completion of 24 years of service and pay band of Rs. 5200-20200 with grate pay of Rs. 2800/- under MACP scheme w.e.f. 1.9.2008 on completion of 30 years service.

On the basis of aforesaid discussion I am of considered view that reference is liable to be decided in favour of workman and against management and claim statement is liable to be allowed. Which is accordingly to decided.

Management is directed to grant aforesaid reliefs to workman within two months after expiry of available remedy against this Award.

Award is accordingly passed.

Dated : 08.02.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 12 अप्रैल, 2017

**का.आ. 1013.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कार्यकारी अभियंता (चुनाव), सीपीडब्ल्यूडी, गाजियाबाद, उत्तर प्रदेश एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के

बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 104/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.03.2017 को प्राप्त हुआ था।

[सं. एल-42011/75/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 12th April, 2017

**S.O. 1013.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 104/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Executive Engineer (Elect.), CPWD, Ghaziabad, Uttar Pradesh and their workman, which was received by the Central Government on 09.03.2017.

[No. L-42011/75/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

**BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI-110032**

**I.D. No. 104/2011**

Sh. Sache Singh (The Joint Secretary)  
All India CPWD (MRM) Karamchari Sangathan,  
House No. 4823, Gali No.-13, Balbir Nagar Extn.,  
Sahadra, Delhi 110032

#### Versus

The Executive Engineer (Elect.),  
CPWD, Hindon Electrical Central Division  
Hindon Air Field, Hindon  
Ghaziabad (U.P.)

#### AWARD

The Central Government in the the Ministry of Labour vide Letter No. L-42011/75/2011-IR(DU) Dated 10.10.2011 referred the following Industrial Dispute to this Tribunal for adjudication:-

“Whether the workman Shri Sache Singh, Khalasi is entitled to be granted promotional payscale of Rs. 950-1500 w.e.f. 01.04.1991 instead of Rs. 800-1100 under insitu promotion scheme along with all consequential benefits as well as under IInd ACP Scheme and MACP Scheme of 6<sup>th</sup> pay commission? What relief the workman is entitled to?”

On 11.11.2011 reference was received in this Tribunal. Which was register as I.D. No. 104/2011 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 19.06.2013 claim statement along with documents has been filed by workman. Through which workman prayed as follows:-

“In view of the above facts and circumstances of the case, the workmen most humbly and respectfully prays for the following among other relief:

- i) To pass an award to grant the pay scale of Rs. 950-1500 to Shri Sache Singh, Khalasi (Retired) w.e.f. 01.04.1991 under In-Situ promotion with all consequential benefits.
- ii) To pass an award to grant the pay scale of Rs. 4000-6000 under ACP Scheme w.e.f. 9.8.1999 on completion of 24 years of service and pay band of Rs. 5200-20200 with grate pay of Rs. 2800/- under MACP scheme w.e.f. 1.9.2008 on completion of 30 years service.
- iii) Any other relief which may kindly be deemed fit and proper to meet end of justice.

Anaist Claim statement management filed its written statement on 2.8.2013. Where-in management prayed as follows:-

“It is therefore most respectfully prayed that this Hon’ble court may graciously be pleased to dismiss the petition as the workman is not entitled for any relief as claimed in this petition.”

On 17.10.2013 on the basis of pleadings of the parties I framed following issues:-

1. Whether the workman Shri Sache Singh, Khalasi is entitled to be granted promotional payscale of Rs. 950-1500 w.e.f. 01.04.1991 instead of Rs. 800-1100 under insitu promotion scheme along with all consequential benefits as well as under IInd ACP Scheme and MACP Scheme of 6<sup>th</sup> pay commission?
2. What relief the workman is entitled to?

Fixed 3.12.2013 for workman evidence.

On 12.6.2014 workman filed affidavit in his evidence along with its copy to be furnished to management. Fixed 7.8.2014 for tendering of affidavit and cross-examination of workman.

Workman tendered his affidavit along with certain documents which are Ex. WW1/1 to WW1/6 on 27.01.2015.

On 16.7.2015 workman Sh. Sache Singh was cross-examined on fresh oath by Sh. Satish Kumar Sharma Office Superintendent for management and his cross-examination is concluded. Fixed 24.8.2015 for management evidence.

On 10.03.2016 management witness Sh. G.D Rajpali aged 59 years S/o Late Sh. Moti Lal Rajpali working as Executive Engineer (E), H.C.E.D, C.P.W.D H.A.F, Hindon was tender his affidavit along with documents Ex. MW1/1 to Ex MW1/2 in his evidence. He was cross-examined on same day by Sh. Satish Kumar Sharma Ld. A/R for workman. His cross-examination is as follows:-

“It is correct the workman Sh. Sache Singh was appointed as khalasi on 10.05.1972.

It is also correct the workman was superannuated from the service as khalasi on 31.07.2012.

It is correct that the workman was granted INSITU promotion w.e.f. 01.04.1991 in the pay scale of Rs.800-1150.

It is correct INSITU promotion granted to the workman in accordance DOPT order dated 13.09.1991. This is Ex WW1/1. The workman not passed trade test during the service period.

It is correct the pay scale was granted to the workman is equal to the semi-skill pay scale.

It is correct that the Assistant Category was merged with the main category w.e.f. 1.1.1973 on account of implementation of arbitration award 1988. DGW, CPWD had issued the order on 7.5.1997 for revision of pay scale such workman and payment of arrears w.e.f. 1.4.1981. The order is already Ex WW1/2.

It is correct that the letter dated 27.1.2010 issued by the Superintendant Engineer, Electrical coordination circle CPWD regarding the detail of funds.

It is correct categorization workman of CPWD and promotion are governed by CPWD manual volume III and amendment time to time.”

On 26.04.2016 workman filed his written argument.

On 17.10.2016 management filed its written argument.

I reserved Award on 23.11.2016.

I clarified certain fact than Ld. A/R for workman made clarification through additional written arguments. Copy of which supplied to management but no reply on behalf of management against additional written argument filed. Case was again reserved for Award on 26.12.2016.

It is relevant to mention here that management through speed post sent an application seeking permission to file the proper written statement. That application received in this tribunal through speed post on 28.10.2016. On which I passed following order:-

“Put up for order along with Award of instant case.”

Before passing of Award I am passing order on aforesaid application of management.

As per provision under section 33 of C.P.C. When case has been reserved for judgment (Award) then court is duty bound to pronounce judgment or pass award. In this background aforesaid application of management entails rejection. Which is accordingly rejected being not maintainable.

I have perused the pleadings of parties including their evidence as well as contents of written arguments of both parties to pass reserved Award.

My issuewise finding is as follows:-

**Finding on Issue No.1-**

It is relevant to mention here that burden to prove issue No. 1 lies on workman.

To discharge his burden workman adduced his evidence.

He was cross examined at length but nothing could be extracted out in his cross-examination by Ld. A/R for management. So his testimony comes within the category of required evidence as well as reliable and credible evidence.

Moreover management in rebuttal produced its witness MW1 Sh. G. D. Rajpali who admitted certain facts favourable to workman.

Which has been mentioned above

On the basis of aforesaid discussion I am of considered view that issue No.1 is liable to be decided in favour of workman and against management of CPWD. Which is accordingly decided.

**Finding on Issues No. 2-**

Which is in respect of entitlement of relief.

To decide it I perused the pleadings of claim statement along with reliefs claimed by workman as well as pleadings of management including evidence of parties and my finding on issue No. 1.

Which shows that on the basis of required, credible and reliable evidence of workman I have decided the issue No.1 in favour of workman and against management of CPWD.

So issue No.2 is also liable to be decided in favour of workman and against management of CPWD.

Which is according decided and following reliefs to workman sh. Sache Singh are granted:-

- (1) Pay scale of Rs. 950-1500 to Shri Sache Singh, Khalasi (Retired) w.e.f. 01.04.1991 under In-Situ promotion with all consequential benefits.
- (2) Pay scale of Rs. 4000-6000 under ACP Scheme w.e.f. 9.8.1999 on completion of 24 years of service and pay band of Rs. 5200-20200 with grate pay of Rs. 2800/- under MACP scheme w.e.f. 1.9.2008 on completion of 30 years service.

On the basis of aforesaid discussion I am of considered view that reference is liable to be decided in favour of workman and against management and claim statement is liable to be allowed. Which is accordingly decided.

Management is directed to grant aforesaid reliefs to workman within two months after expiry of available remedy against this Award.

Award is accordingly passed.

Dated : 08.02.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 12 अप्रैल, 2017

**का.आ. 1014.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स लेमबर्गर एशिया सर्विस लिमिटेड, नवी मुंबई एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, मुंबई के पंचाट (संदर्भ संख्या 2/11 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.04.2017 को प्राप्त हुआ था।

[सं. एल-42012/134/2013-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 12th April, 2017

**S.O. 1014.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 2/11 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the M/s. Schlumberger Asia Service Ltd., Navi Mumbai and their workman, which was received by the Central Government on 10.04.2017.

[No. L-42012/134/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI****PRESENT : M.V. DESHPANDE, Presiding Officer****REFERENCE NO. CGIT-2/11 of 2014****EMPLOYERS IN RELATION TO THE MANAGEMENT OF  
M/s. SCHLUMBERGER ASIA SERVICE LTD.**

M/s. Schlumberger Asia Services Ltd.  
D-105, TTC Industrial Estate  
MIDC Nerul  
Opp. D.Y. Patil Stadium  
Thane Belapur Road  
Nerul (E)  
Navi Mumbai-400 0706

**AND****THEIR WORKMEN**

Mr. Vilas Raghunath Bagwe  
Panchsil Building M-2  
Room No.614, 6<sup>th</sup> floor  
Maharishi Valmiki Marg  
Matunga Labour Camp  
Mumbai-400 019.

**APPEARANCES:****FOR THE EMPLOYER : Mr. P.A. Deogaonkar, Advocate****FOR THE WORKMAN : No appearance**Mumbai, dated the 14<sup>th</sup> February 2017.**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No.L-42012/134/2013-IR (DU), dated 11.02.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

*“Whether there is an employer-workman relationship between the management of M/s. Schlumberger Asia Services Ltd, Navi Mumbai and Shri Vilas Raghunath Bagwe under the provisions of Industrial Disputes Act, 1947? If so, 2. Whether the demand of Shri Bagwe for reinstatement in service as ‘Welder’ with continuity of service and full back wages and all consequential benefits for the period from 05-06-2000 onwards till the date of actual reinstatement is legal, proper and justified? If so, 3. To what relief Shri Bagwe is entitled to and from which date and what other directions are necessary in the matter?”*

2. After receipt of the reference, both parties were issued notice of the Reference. Notice sent to workman was returned by postal authorities with remarks ‘Left’. Thereafter vide Ex-5 & Ex-6 notices were again issued to second party workman. The matter was adjourned on several occasions for filing of Statement of Claim by workman. Second party workman did not remain present before this Tribunal nor filed his Statement of Claim. In the absence of Statement of Claim matter cannot be adjudicated First party filed application (Ex-7) for disposing the reference for want of prosecution. Orders were passed on Ex-7. Accordingly Reference is disposed of for want of prosecution.

**ORDER**

Reference stands disposed for want of prosecution.

Date: 14.02.2017

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 12 अप्रैल, 2017

**का.आ. 1015.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भाभा परमाणु अनुसंधान केंद्र व अन्य, ट्रॉम्बे, मुंबई एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में

निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 2, मुंबई के पंचाट (संदर्भ संख्या 2/63 ऑफ 2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.04.2017 को प्राप्त हुआ था।

[सं. एल-14025/5/2005-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 12th April, 2017

**S.O. 1015.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 2/63 of 2009) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in Annexure, in the industrial dispute between the employers in relation to the Bhabha Atomic Research Centre, and others, Trombay, Mumbai and their workman, which was received by the Central Government on 10.04.2017.

[No. L-14025/5/2005-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

**PRESENT :** M.V. DESHPANDE, Presiding Officer

#### REFERENCE NO. CGIT-2/63 of 2009

#### EMPLOYERS IN RELATION TO THE MANAGEMENT OF

- 1) Bhabha Atomic Research Centre,  
Trombay,  
Mumbai – 400 074.
- 2) Shri Pravin Joshi, Proprietor,  
M/s. S.P. Industries,  
109, Old Hanuman Lane,  
Kalbadevi Road,  
Mumbai – 400 002.

**AND**

#### THEIR WORKMEN

Mumbai Shramik Sangh  
(Bombay General Employees Union,)  
'Sangharsh', Quarry Road,  
Bhandup, Mumbai – 400 078

#### APPEARANCES:

FOR THE EMPLOYER (1) : Mr. H.D. Rathod, Advocate.

(2) : No appearance

FOR THE WORKMEN : R.D. Bhat, Advocate

Mumbai, dated the 1<sup>st</sup> March, 2017.

#### AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-14025/5/2005 – IR (DU) dated 07.12.2005. The terms of reference given in the schedule are as follows :

*“Whether the demand of Bombay General Employees Union, Bombay for regularization of the employees as per list enclosed, in the Atomic Research Centre with effect from respective dates of completing 240 days in the service premises of Bhabha Atomic Research Centre is just and legal ? If so, what relief the workmen are entitled and from which date ?”*

2. Initially the demand have been raised by the Bombay General Employees Union, Bombay. The said union has become non-functional due to indisposition of its General Secretary. The concerned employees numbering 27 have



since joined Mumbai Shramik Sangh who will have prosecuting the reference. Accordingly the statement of claim has been filed by Mumbai Shramik Sangh in respect of said workmen.

#### List of Workmen

1. Shankar Kashi
2. Shamsuddin Raj Mohamed
3. Simon Swaminathan
4. Veeramani Kuppusamy
5. Cinnaraj Cinnanayagam
6. Cinnaraj Mayavan
7. Raman Manni
8. Nagappan Pulavan
9. Swaminathan Thanbal
10. Anthony Aanithikam
11. Kolanji Cinna Thambi
12. Mouniyan Raman
13. Gopal Mayavan
14. S. Kolanji Sengan
15. Duraikannu Cinna Thambi
16. Chandrakant Thombare
17. Laxman Mikavi
18. Ravi Kothalikar
19. Maturlal Walmiki
20. Ragunath Sarve
21. Manoj Naby
22. Dharamraj Lagade
23. Arumugan Kalian
24. Kashi Kuppan
25. Periyasamy Thangaraj
26. Cinnadurai A. Moolam
27. Raju D. Kothalikar

3. After the receipt of the reference, both the parties were served with the notices. They appeared through their respective representatives. Second party union filed statement of claim Ex.11. According to the union, first party employer Bhabha Atomic Research Centre, Trombay has a large residential complex within the premises of the centre. The entire Bhabha Atomic Research Centre is located in a vast land at Trombay. Atomic Reactor by name 'Apsara' is located near seashore. Office building, laboratories are located nearby. There is also a small dispensary. All these are surrounded by compound wall, entry to which is by main gate. Area is prohibited area and only authorized persons are permitted to enter this area. Outside this area, there are in all 180 buildings of various heights, hospital, dispensary and hostels are located outside the restricted area.

4. The centre is an establishment functioning under the Department of Atomic Energy of the Central Government. These residential premises are allotted to the officers and employees of the centre as quarters. The employees concerned with this reference have been carrying out the work of cleaning, sweeping etc. in some of the premises while several other employees who are similarly placed but who are treated as employees of the centre are also working in the rest of residential premises which are also occupied by the officers and employees of the centre. As such the housekeeping i.e. the same work which is done by the workmen concerned with this reference in the hospital,

dispensary and the hostels is done by the regular employees of Bhabha Atomic Research Centre who are paid wages and other benefits as per the recommendation of 5<sup>th</sup> Pay Commission.

5. According to the union in 180 buildings employees of Bhabha Atomic Research Centre are permitted to reside during the tenure of their service in Bhabha Atomic Research Centre. The portion of this area is known as Anushakti Nagar remaining area is called New Mandela. The workmen concerned with this reference are required to daily sweep staircases and common areas of the 43 buildings. The names of which are stated in Annexure – Y. They are required to collect the garbage from each household within the buildings. The collected garbage is required to be segregated in wet and dry garbage. Then the said wet and dry garbage is required to be shifted to the place from where it is collected by Municipal Corporation. The workmen concerned with the reference are also required to clean the surroundings of the buildings. Fortnightly staircases and common areas & galleries are required to be washed. Cobwebs are required to be removed once in a month. The workmen are required to clean the drain once in a month. As such centre has been appointing the workmen to carry out the work of sweeping, cleaning etc. in the residential premises allotted as quarters to the officers and employees of the centre and later absorbing them in the services of the centre from time to time. The workmen appointed to carry out the work of sweeping and cleaning in hostels inside the North gate are also absorbed in the services of centre. Some of the workmen who joined much later but who were working in the hostels and carrying out the same work have been absorbed in the services of the centre by ignoring the cases of workmen concerned with this reference. Such absorption was done in 1988 and later on 1996. The centre has hospital and 3 dispensaries in the residential complexes used as quarters. The workmen doing similar work i.e. sweeping and cleaning but working in the hospitals and dispensaries have been treated as workmen of the centre.

6. According to the union, Shri Rahul D. Gajankhush who is employee of Bhabha Atomic Research Centre is overall incharge of house-keeping work in all these 180 buildings. There are various supervisors working under him who give specific instructions to the workmen concerned with this reference as also other workmen regarding washing, cleaning of the complexes and clearance of drains. Supervisors used to take round to ensure that work is done properly. Supervisors of the purported contractors report the names of workmen present and doing work at various places every day to Shri Rahul D. Gajankhush. All supervision is done jointly by the officers of the first party employer and supervisors appointed by the purported contractors. The concerned workmen are not given any leave except weekly offs on Sunday. They are paid wages as per minimum wages. No other facilities such as toilet, drinking water was available with the concerned workmen. Over the period additional work has been thrust upon the workmen i.e. washing of stair cases in common areas was done once in a month in the past has been now increased to twice in a month. Thus the additional work is done by the concerned workmen with the reference.

7. According to the union on and from 20.7.1990 the centre started for the first time giving the work of sweeping and cleaning the quarters on contract basis. Since then there have been different contractors from time to time but the workmen concerned with the reference have been continuously working inspite of change of contractors. There has not been any break on account of either change in the contractor or on any other ground. The workmen concerned with the reference have thus completed work for more than 240 days in successive years as on this date.

8. According to the union, their attendance register is marked by the site supervisor and site engineer are the employees of centre. Muster is signed by the workmen. Subsequently the site supervisor sent report to the office of centre stating the number of workmen reported for work. As such the work of the employees concerned with the reference is supervised by the site engineer. Even supervisor of the centre as well as supervisor employed by the contractor take round as and when they feel like. The payment is done by the contractor in presence of site supervisor Shri Padwe. PF & ESIC contributions are deducted and they are paid only minimum wages.

9. It is thus case of the union that the complaint of unfair labour practices was filed in the Industrial Court, Mumbai being complaint (ULP) No. 305/1992. By an order dated 14.02.1992 the contractor Shri Praveen Joshi was directed not to terminate the services of the workmen. The said complaint was filed on behalf of the workmen concerned with the reference. Central Government by Notification issued sometime in 1993 had abolished employment of the contract labour in respect of work relating to sweeping and cleaning in respect of Central Government office and Central Government Undertakings. Hence the Writ Petition bearing No. 914/1993 was filed in the Hon'ble Bombay High Court. Subsequently, the present dispute was raised which has been referred for adjudication by this tribunal. Therefore since the workmen are infact and in law workmen of the centre, they have completed 240 days work in successive years and even prior to protection granted by the Industrial Court initially and later on by the Hon'ble Bombay High Court. They are therefore entitled to be absorbed and regularized in the services of the centre from 1991. They are also entitled to arrears of wages as applicable to the permanent workers of the centre minus the wages already paid. They are also entitled to all other pre-requisites as are applicable to the other regular workmen of the centre. They are therefore asking for regularization from 1991 or 1994 and payment of arrears of wages and other benefits applicable to the permanent workmen of the centre.

10. First party management has resisted the claim by filing written statement Ex.23. According to the first party management this tribunal have no jurisdiction to try and entertain the present dispute as the first party management is

Government of India, Directorate of Construction Services and estate management of Department of Atomic Energy which is purely a Central Government department. It cannot be termed as industrial dispute since first party management is a service unit under the Department of Atomic Energy. As such first party management is not an industry as defined under I.D. Act, 1947.

11. It is also the contention of the first party management that the dispute was originally raised by the Bombay General Employees Union, Bombay by filing Writ Petition bearing No. 914 / 1993 on or about 17.04.1993. That union does not exist now. It has been wrongly substituted by the second party Mumbai Shramik Sangh which did not exist at the time of arising the cause of action, hence second party union has no locus-standi or legal authority to inter-meddle the present matter.

12. It is then the contention of the first party management that all types of services such as provisions of water supply, maintenance of electrical supply, maintenance of departmental residential buildings etc. in addition to construction of buildings for offices and residential premises are provided by the management by awarding contracts by paying lumpsum contract amounts. Contractors engaged the labours on daily wages. The role of first party management is limited to that of principal employer and the principal employer after awarding the contract has no control over the labours and day to day work since the agreement is between principal employer and the contractor. Bhabha Atomic Research Centre, Trombay and Directorate of Construction Services and estate management Anushakti Nagare are two separate units under the Department of Atomic Energy. The labours engaged by the contractor cannot be provided work on permanent basis as the work contracted out is neither full time nor regular in nature.

13. It is the contention of the first party management that hospitals, dispensaries and hostels come under the purview of Bhabha Atomic Research Centre which is separate unit of Department of Atomic Energy. All these premises need continuous cleaning throughout the day. Hence the persons are appointed by the Bhabha Atomic Research Centre for these jobs on regular basis. Moreover, the Bhabha Atomic Research Centre being prohibited area under the Atomic Energy Act, 1962, all the employees have been appointed after thorough verification and re-verification for security reasons as per Department of Atomic Energy Recruitment Rules.

14. It is contended that the site supervisors, supervisors are required to supervise the work only to confirm whether the work is carried by the contract labours as per specification in the work order. The payment is done by the contractors to his labours in presence of departmental supervisor only in order to ensure that contractor makes the payment to its labours in accordance with minimum wages act. Deposition of PF & ESIC deducted from the wages of the labours in the office of Regional P.F. Commissioner is the duty of contractor. As such the cosmetic maintenance work of the areas in and around the tower blocks type D, E and public buildings at Anushakti Nagar was given to M/s. S.P. Industries Bombay at a lumpsum payment of Rs.5.50 lakhs as per the work order No. CSG/ESD/M/11/244 dated 30.09.1992. The period of contract was from 1.10.1992 to 30.9.1993. The contractor was engaging 23 number of labours for the above work. however, since the contractor did not pay his labours for the month of March & April 1993 and did not provide adequate equipments and cleaning material to the labours, the contract was cancelled vide office order No. CSG/ESD/M/II/244 dated 23.4.1993 and the balance work for the remaining period from 1.5.1993 to 30.9.1993 was awarded to second lowest tenderers M/s. Creative Décor at the risk and cost of M/s. S.P. Industries. Shri Shabir Décor, the Proprietor of M/s. Creative Décor continued to engage the labour of M/s. S.P. Industries. The construction and service group has directly disbursed the salary of 23 workers for the month of March & April 1993. In the mean time some of labours engaged by M/s. S.P. Industries and subsequently by M/s. Creative Décor filed writ petition in Hon'ble High Court of Judicature at Bombay claiming that they be treated as employees of principal employer and salary & advance at par with employee of the Central Government doing similar jobs be given to them and interim relief be given by order of injunction restraining the Respondent from dismissal of contract labour. The contractors continued to engage same labour only to comply with the interim order passed by Hon'ble High Court on 4.5.1993. The Directorate has no control over the labour engaged by the contractor. As such first party management has no employer-employee relationship with the labours engaged by the contract.

15. It is the contention of the first party management that it has got the powers to accept or reject any tender and to negotiate for rejection of value of contract. According to the first party management awarding the work to the contractors is for getting the job done. The Directorate holds merely the status of principal employer under the Contract Labour Regulation, Abolition Act, 1970, therefore the question of regularization of the services of the concerned workmen who are engaged by the contractors in DCS&EM does not arise. It is also contended by the management that there are no sanctioned post for regularizing the services of the concerned workmen in first party management Organisation. Central Government department, first party management has to strictly follow the procedure for requirement of any category of workmen / staff as per the guidelines of Government of India. Such applicants should come through employment exchange and in response to the newspaper advertisement for filling of any vacancy in the first party management Organisation. They are first screened, short listed and called for test/ interview, final selection and thereafter subject to medical examination, verification of character antecedence through police, appointment orders are issued and then only they are employed in the services of first party management. None

of the members of second party union have undergone the above procedure and are not the employees of first party management.

16. It is also the contention of the first party management that it has engaged casual labours on casual labour muster roles to carry out some auxiliary jobs like cosmetic maintenance in the township. The Government of India, Department of Personnel & Training has formulated the scheme called Casual Labour (grant of temporary status and Regularisation scheme) vide its O.M. No. 51016/2/90-establishment (c) dated 10.9.1993. Accordingly at the inception of the said scheme these casual labours on the casual muster rolls of the first party management who were fulfilling the terms & conditions of the said scheme were conferred with temporary status and subsequently regularized in service at the minimum scale of latest group 'D' employees subject to availability of vacancy and after following the prescribed procedure for the recruitment of employees under the Government of India. So far concerned workmen, in the absence of notification under section 10 of CLRA Act prohibiting the employment of the contract labour, they are not entitled to claim absorption. The first party management thus denied the allegations in the statement of claim. Thus, they prayed that reference be dismissed with costs.

17. The second party union has filed rejoinder Ex.24. They have replied the new points raised by the first party management in their written statement. They have denied all the allegations made in the written statement and reiterated the contentions in the statement of claim.

18. Following issues are framed for my determination at Ex.30. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether the employees under reference in Bhabha Atomic Research Centre are entitled for regularization in their respective services from completion of 240 days of their respective services ?	Yes
2.	Whether the employees under reference are entitled to any relief?	Yes As per final order
3.	What Order ?	As per final order

Sr. No.	Additional Issues	Findings
1	Whether the first party is an 'industry' as defined under Industrial Dispute Act, 1947 ?	Yes
2.	Whether the second party has locus-standi to represent all the concerned workmen in this reference ?	Yes

### Reasons

#### Additional Issue No. 1

19. So far this issue is concerned, the pleadings of the first party management in the written statement are to the effect that Bhabha Atomic Research Centre is part of the Department of Atomic Energy under the Prime Minister's office at Delhi. The department is for specific research and therefore it is sovereign function.

20. However, in this respect if we see the evidence of first party, it has come on record that Bhabha Atomic Research Centre is involved in several commercial activities such as isotopes which are supplied to the hospitals. In his evidence Dr. Jagan Mohan Rao has stated that Bhabha Atomic Research Centre carries on its work in a systematic manner with the assistance of employees and also engaged in commercial activities.

21. There are three tests to consider whether the establishment or an undertaking is an industry or not ? they are,

1. existence of systematic activity
2. co-operation between employer and workmen
3. produces goods and services for the benefits of society.

In this respect hand can be laid on the decision in case of Bangalore Water Supply & Sewerage Board V/S. A. Rajappa 1978 LAB IC 467.

22. From the evidence of Dr. Jagan Mohan Rao, it is clear that apart from research, Bhabha Atomic Research Centre is also involved in other commercial activities such as isotopes which are supplied to the hospitals. He also stated that the activities are conducted in a systematic manner. Atomic power generated in Apsara is supplied and isotopes supplied to the hospitals by Bhabha Atomic Research Centre are used for the treatment of the patients especially suffering from cancer. Bhabha Atomic Research Centre has thus satisfied the above tests laid down by the Hon'ble Apex Court in the decision cited supra. It can be said therefore that atomic energy is not a sovereign function. All matters related to atomic energy are looked after by the Central Government only because the defence and international regime relating to atomic energy. Defence and collection of taxes are only two sovereign functions. All other activities carried on by the Central Government and its agencies or the departments do not constitute sovereign functions.

23. That apart the submission to the effect that the residential buildings where the employees of first party reside is part of the undertaking of Bhabha Atomic Research Centre and are not separate and independent entity. But then the fact remains that these residential buildings where the employees of first party employer reside is constructed and maintained by the Bhabha Atomic Research Centre and the houses therein are allotted to the employees of the first party. Even the maintenance of the residential buildings is part & parcel of functioning of Bhabha Atomic Research Centre. In view of this it can also be said that the first party is an industry as defined under Industrial Disputes Act, 1947. This issue is answered accordingly in affirmative.

#### **Additional Issue No. 2**

24. Mumbai Shramik Sangh was permitted to file statement of claim as per order at Ex.25. As a matter of fact demand referred for adjudication was initially raised by Bombay General Employees Union since the said union has become non-functional, the workmen concerned are represented by Mumbai Shramik Sangh. The objection in that respect has been heard and rejected. Obviously it can be considered that Mumbai Shramik Sangh has Locus-standi to represent all concerned workmen in the reference. This issued is therefore answered accordingly.

#### **Issue No. 1 & 2**

25. This is main contentions issue. It is submitted on behalf of the first party that the workmen under reference are contract labours since contractor engaged them for cosmetic maintenance work in the residential buildings located in Anushakti Nagar under the purview of DCSEM. It is submitted that the contracts are awarded to the contractors through public tenders and as per contract, contractors are required to pay wages to them and also required to observe compliance of all applicable labour laws such as ESIC, PF etc. It is mainly the contention of the management that it has no control over the labours since previty of contract is between first party employer and the contractor only. In view of these pleadings it is to be seen whether the contracts are genuine or not ?

26. We have documents, showing that work orders were issued by the first party management. Ex.48 is the copy of work order dated 31.8.2009 placed on Tarun Enterprises. Ex.49 is also a copy of work order dated 21.1.2010 and Ex.50 is a booklet giving details of the conditions of causes of the contract. Whatever stated by D. Jagan Mohan Rao, witness of the management is that workmen concerned in this case are casual / daily wagers employed by the contractor of the first party management and there is no employer-employee relationship between them since first party management has no control over these workmen. He then states that Department of Atomic Energy created separate Directorate of Construction Services and estate management (DCSEM) who is compelled to out-source some of their casual and seasonal kind of works to provide contractors and as such the labour services are hired only for the period of contract.

27. But the cross-examination of this witness clearly blows of his version. The specific question was asked to this witness in his cross examination and he replied that he does not know since when the concerned workers are working or that the concerned workmen are working continuously since 20.7.1990 till this date or not ? He even does not know the number of contractors who were engaged during this period and thus it is clear from the evidence that he does not know since when the concerned workmen are working.

28. As a matter of fact it has come on record that the concerned workmen are working since 20.7.1990. It has also come on record that Bhabha Atomic Research Centre is located in the land admeasuring about 3.5 km wherein there are 180 multi-storied buildings, hospitals, dispensaries, hostels and quarters which are allotted to the employees working in Bhabha Atomic Research Centre. So far plumber, electrician, masons are concerned, they are carrying out repair & maintenance of these buildings and 39 workmen were earlier working in these buildings who are absorbed / regularized in their services when they raised the dispute and then they are shifted to other buildings. Evidence is to the effect that in their place the concerned workmen are now working since 20.7.1990. They are working continuously since 20.7.1990 i.e. for about 26 years without any break. This sort of evidence has not been rebutted.

29. Learned counsel for the first party submitted that concerned workmen are engaged by the contractors from time to time for cosmetic maintenance work and since the contracts are awarded to the contractors for doing work & not for enjoying labours. They have issued advertisement calling upon tenders from the contractors, contractors have submitted

their tenders and the documents pertaining to the contracts are placed on record and exhibited and then these documents are not disputed by the union. In the circumstances, the submission is that the concerned workmen are continued in service only due to prohibitory order passed by the Hon'ble High Court in W.P. No. 914/1993 which was filed by the Bombay General Employees Union wherein the Hon'ble High Court was pleased to issue the order of injunction dated 4.5.1993 restraining the Respondent No.1 i.e. first party employer and its agents from dismissing the concerned workmen listed in Annexure – A. In view of Hon'ble High Court order the contractors subsequently engaged by the department were to engage the same workers and therefore they are being continued in the service.

30. On going through the order of Hon'ble High Court Ex.39, it appears that the matter was referred to the Government for taking appropriate decision but then it is also clear that the Hon'ble High Court has modified the said interim order by order dated 19.12.1996 to the extent that it would be open to the Respondent No.1 to take action against those workmen who are not found medically fit for the kind of work of cosmetic maintenance and it would also be open to relieve those persons who have attained the age of superannuation. It is thus clear from the order of Hon'ble High Court in W.P. that the first party management was restrained from dismissing these concerned workmen from the service except that they can take action against the workmen who are not medically fit and that they can relieve those workmen who have attained the age of superannuation. This interim order passed by the Hon'ble High Court has not been challenged by the first party management at any time during the period and this is also admitted by the management's witness in his cross examination. The fact remains therefore that the concerned workmen are working since 20.7.1990 and are doing the work of cleaning the buildings, lifting the garbage waste etc. and such other work which was being carried out by the 39 workmen who were earlier working and who are regularized by the first party management. It can be said therefore that the concerned workmen are carrying the work of perennial nature which those 39 workmen were doing and who are earlier regularized by the management.

31. We have no document in respect of contract between first party Management and the contractor for the year 1990-91. So far documents are concerned, these are the documents pertaining to the contractors for the year 2009 to 2013. Ex.51 is the document pertaining to the PF registration of the previous contractor Shiv Kumar Enterprises dated 16.1.1995 and Ex.52 is also a registration of contractor Shiv Kumar Enterprises dated 16.1.1996. Even if these documents are being taken into consideration then the fact remains that first party has changed contractors from time to time but then despite of the change in the contractors the workmen concerned are continued to work. Substantial amount of PF contribution both the employer contribution and contribution from employees has been taken and then it appears that in March & April 1993 there was no contractor though the workmen concerned continued and the wages were paid to the concerned workmen by the first party management. Even management witness admitted in cross-examination that Shri Gajakosh, Das, Lakhan and Balkrishan were in touch with the concerned contractors to take the measurement of the work done by the concerned workmen and then employees of the first party were supervising the work of the concerned workmen. From the above evidence the fact remains that the concerned workmen are working since 20.7.1990. They are continued even though the contractors have been changed. Their work is supervised by the officers of first party management as and when required. Their PF contribution and ESIC installments were deducted. They are paid minimum wages and they were doing the work of perennial nature which was being done by 39 employees who have been regularized earlier by the first party management. In view of that it can be said that the first party management started inducting the contractors since 1990 and before that 39 workmen who were working have not been engaged by the contractors and they are regularized. Therefore the contractors inducted since 1990 and thereafter are camouflage merely to deprive these workmen from getting their legitimate right of permanency.

32. I say so because in 1990 the concerned workmen are engaged in place of workmen who were regularized for doing the similar type of work which is perennial in nature and are continued in services since then as per the order of Hon'ble High Court. Even though some relief was given to the first party by modifying the said interim order and even first party management has not challenged the said interim order.

33. Even from the documents it can be seen that the concerned workmen are directly controlled and supervised by the office of first party employer. Ex.4 stipulates that the contractor should employ minimum 23 workers with one supervisor. Ex.4 states that the controlled phase programme of the work including supply of material keeping in view the completion period may be prepared in consultation with Engineer incharge and in para 14 it is stated that formal agreement will be signed. The nature of work to be done by the concerned workmen is directed by Engineer incharge. Hence if the veil is lifted there is no doubt that the entire work of the concerned workmen is supervised and controlled by the officers of the first party employer.

34. Even as per contention of first party employer the contractors are required to obtain licence from the Government of India, Ministry of Labour & Employment under the Contract Labour (Regulation & Abolition) Act as per the contract. But then the evidence shows that the license obtained by the contractors Shiv Kumar Enterprises is only for the year 2012 onwards. It is admitted by the witness of the first party management that contractor Shiv Kumar Enterprises had obtained the licence only in June 2012 when on the contrary it is the contention of the first party that the contractor Shiv Kumar Enterprises engaged the concerned workmen in 1990 and the contractors were asked to

obtain the licence. Admittedly, prior to 2012 there was no licence. There is no any registration nor any licence hence there is no contract system at all as contemplated in Contract Labour [Regulation & Abolition] Act, 1971.

35. In view of this, it is the submission of the second party workmen that they are direct employees of first party employer. Learned Counsel for the second party also submitted that in such circumstances concerned workmen who are shown contract labours by the first party employer can very well raise the industrial dispute. In support of his argument, learned counsel resorted to Apex Court ruling in Steel Authority of India Ltd. V/S. Gujarat Mazdoor Panchayat 2004 II LLJ 970 wherein the Hon'ble Court observed that,

“position of law which emerges from reported decision of the Supreme Court is that workmen working under contractor are entitled to raise a demand that they should be declared as workmen of the Principal employer. It is always open to the workmen concerned to place material before the industrial adjudicator to show that contract between principal employer and the contract labourer is sham and not genuine and claim declaration that they were always the employees of the principal employer and are entitled to appropriate service condition”.

36. Relying upon above Apex Court judgment, Hon'ble Bombay H.C. in Sudharshan Chemical Industries Ltd. V/S. Labour Commissioner and Ors. 2013 III CLR 530 observed that,

“where contract was found sham and nominal rather a camouflage in which case contract labourer working in the establishment of the principal employer was held infact and in reality. The employee of principal employer himself. Indeed such cases do not relate to abolition of contract labour but present instance wherein the court pierced the veil and declared the contract position as a fact at the stage after employment of contract labour stood prohibited”.

37. In para 6 of the judgment by referring the Apex court ruling the Hon'ble court observed that

“thus in substance the Apex court held that when the contract is found to be sham and camouflage question of abolition of contract labour does not arise in as much as in reality contract does not exist. In such cases the employees who are allegedly shown as employees of contractors are infact the direct employees of the principal employer”.

38. The Learned Counsel for the first party submitted that though the workmen had worked for 240 days in a year their appointment was not from the regular stream of appointment and therefore they are not entitled for regularization. He seeks to rely on the decision of Dena Bank V/S. Ashraf Yalu Shaikh 2009 III CLR 426 to submit that since the appointment of the concerned workmen was not from the regular stream of appointment they are not entitled to reinstatement but only compensation has envisaged under section 25F of I.D. Act, 1947.

39. He also seeks to rely on the decision in case of Surender Prasad Tiwari V/S. U.P. Rajya Krishi Utpadan Mandi Parishad 2007 (I) ALL MR 461 to submit that temporary employee appointed dehorn rules. The court cannot realize such services. In constitutional scheme there is no room for back door entry in the public service.

40. He also seeks to rely on the decision in case of M.P. Housing Board and Anor. V/S. Manoj Srivastava 2006 (2SCC 702) to submit that the daily wager does not hold the post to drive any legal right in relation thereto unless he is appointed

1. against duly sanctioned vacant post
2. upon following statutory law operating in the field.

If the appointment made in contravention of earlier either 1 or 2 such appointment would be void.

41. He also seeks to rely on the decision in case of Security State of Karnataka and Ors V/S. Umadevi & Ors 2006 II CLR 261 to submit that temporary or the contract labours cannot be regularized in public service. It will amount to back door entry as they are not recruited by following recruitment process.

42. In this respect, the Learned counsel for the second party submitted that in the case cited supra the workmen had sought for abolition of contract labour system and for regularization of contract workmen which cannot be allowed. The concerned workmen are working for first party continuously for more than 26 years. The management has violated the principle of 'equal pay equal work'. Moreover, the work performed by these workmen are of perennial nature and required to be performed by permanent employees. Earlier 39 employees which were doing the similar work are regularized in service by the first party management and therefore engaging contract workers to do such type of work amount to unfair labour practice. First party has not even taken care to seek for permanent post for doing such perennial work and therefore rulings referred are not attracted to the facts of the present case wherein the workmen are not employees of the contractors but are the employees of first party management and they are doing the work of perennial nature for more than 26 years.

43. On this point the Learned counsel for the second party workmen submitted that as various contracts entered into are found to be sham and bogus and workmen are found to be the employees of first party and they are working continuously for years together, they are entitled to get pay and allowances at par with employees of same cadre. In support of this argument Learned counsel for the second party seeks to rely on the decision of U.P. Electricity Board V/S. Puranchandra Pandey & Ors. 2008 (115) FLR 1172 wherein the Hon'ble H.C. observed that,

“in our opinion the decision of Umadevi's case is clearly distinguishable. The said decision cannot be applied to case where regularization has been sought for in pursuance of article 14 of the constitution.”

44. Learned counsel for the second party workmen also seeks to rely on the decision in case of G.M., ONGC Chilchar V/S. ONGC Contractual Workers Union 2008 AIR SCW 96 to submit that award of the tribunal holding the workers to be the employees of principal employer and granting the relief of regularization is not outside the jurisdiction. In para 13 of the judgment it has been observed that,

“real issue was as to status of the workmen of employees of ONGC or of the contractor and it having been found that the workmen were the employees of ONGC, they would be ipso-facto be entitled to all benefits available in that capacity and the issue of regularization to their pale into insignificance. We are find that in this situation the industrial tribunal and the Division Bench of H.C. were justified in lifting the veil in order to determine the nature of employment in the lights of judgment quoted above. We are therefore find that judgment in Umadevi's case would not applicable and the facts of Pandey's case are on the contrary more akin to the facts of the present case”.

45. Learned counsel for the second party workmen submitted that in the light of facts & circumstances of cases and the above Apex Court rulings, direction is required to be issued to the employer to regularize the services of concerned workmen. In support of his argument the Learned counsel for the second party workmen also cited Apex Court ruling in Steel Authority of India & Ors. V/S. National Union Water front Workers & Ors. 2001 III CLR 349 SC wherein in para 121 (5) the Hon'ble court observed that,

“if the contract is to be found not genuine but a mere camouflage the so-called contract labourer will have to be treated as employees of principal employer who shall be directed to regularize the services of the contract labourer in the concerned establishment subject to the conditions as may be specified by it for that purpose”.

46. The Learned Counsel for the first party seeks to rely on the decision in case of Gujarat Electricity Board V/S. Hind Mazdoor Sabha & Ors. 1995 (5 SCC 27) to submit that the appropriate government vests with the authority to abolish the genuine labour contract.

47. He also seeks to rely on the decision in case of Madhyamik Shiksha Parishad UP V/S. Anil Kumar Mishra & Ors. 2005 (5 SCC 122) to submit that the status of the workmen cannot be envisaged for ad hoc appointees on analogy with the provisions of I.D. Act, 1947 importing the instance of completion of 240 days work, completion of said period of work does not import the right to regularization.

48. He also seeks to rely on the decision in case of International Airport Authority of India V/S. International Aircargo Workers Union & Ors. 2009 (13 SCC 374) to submit that whether labour contract was genuine or sham, such dispute is maintainable before the industrial adjudicator even if there is no notification for abolition of contract labour under section 10 (1) of CLRA Act, Industrial adjudicator can declare that so-called contract labours are infact the direct employees of principal employer and contract is only a camouflage to deny employment benefits to employees. If, however, the contract is genuine and there is also no notification abolishing the contract labour under section 10(1) the principal employer cannot be directed to absorb the contract labour.

49. In the instant case there is no notification abolishing the contract labour but the finding of the fact is that contract is not genuine and therefore the principal employer can be directed to absorb the contract labour.

50. In view of above discussion I hold that the concerned workmen are employees of the first party since,

1. Initially before 20.7.1990, the 39 workmen who were employed were regularized. This fact has been stated by the workmen Shri Bhanudas Dagade in his affidavit Ex.42 in para 4 and there is no cross-examination on this point.
2. In their place concerned workmen were engaged since 20.7.1990 and first party management started inducting contractor since 1999, however, till 2012 the inducted contractors were not holding licence. They obtained licence only in 2012.
3. At time the first party paid wages to the workers directly particularly in March & April 1993.
4. Contractors were changed periodically whereas the concerned workmen were working continuously.
5. Their PF and ESIC was deducted.



6. The various categories of works they are doing are of perennial nature.
7. Engaging workmen for work of perennial nature on contract basis amounts to unfair labour practice.
8. Even from record it is clear that the work of these workmen is being supervised by the officers of first party viz. Rahul Gajakosh. All these circumstances indicate that these workmen are employees of the first party and not the employees of the contractors.

51. In the light of above directions I hold that there exists employer-employee relationship between first party and second party employees. Consequently, I hold that periodical labour contracts of various contractors with the first party are found to be sham, bogus and mere paper work and therefore the employees under reference are entitled for regularization of their respective services from completion of 240 days in their respective services. Accordingly, I decide these issues in terms of above observations as indicated against each of them.

### Issue No.3.

52. In view of my findings to the above Issues, I proceed to pass the following order.

### ORDER

1. Reference is allowed with no order as to costs.
2. First party management is directed to regularize the concerned workmen with effect from respective dates of completing 240 days in the service in the premises of Bhabha Atomic Research Centre and pay them the arrears of wages and other benefits applicable to permanent workmen of the centre.
3. Award be passed accordingly.

Date: 01.03.2017

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 12 अप्रैल, 2017

**का.आ. 1016.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार परमाणु ऊर्जा विभाग निर्माण निदेशालय, मुंबई एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 2, मुंबई के पंचाट (संदर्भ संख्या 2/62 ऑफ 2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.04.2017 को प्राप्त हुआ था।

[सं. एल-42025/4/2007-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 12th April, 2017

**S.O. 1016.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 2/62 of 2009) of the Central Government Industrial Tribunal-Labour Court No. 2, Mumbai as shown in Annexure, in the industrial dispute between the employers in relation to the Department of Atomic Energy, Directorate of Construction, Mumbai and their workman, which was received by the Central Government on 10.04.2017.

[No. L-42025/4/2007-IR (DU)]

RAJENDRA JOSHI, Dy. Director

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

**PRESENT :** M.V. DESHPANDE, Presiding Officer

### REFERENCE NO. CGIT-2/62 of 2009

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

Department of Atomic Energy,  
Directorate of Construction, Services and  
Estate Management, Vikram Sarabhai Bhavan,  
Anushakti Nagar,  
Mumbai – 400 094.

**AND**

**THEIR WORKMEN**

The President [Shri A.S. Jadhav],  
Anushaktinagar & Mandala Township  
Garden Employees Union,  
C/o. 'Sangharsh', Quarry Road,  
Bhandup, Mumbai – 400 078.

**APPEARANCES:**

FOR THE EMPLOYER : Mr. H.D. Rathod, Advocate.

FOR THE WORKMEN : Mr. R.D. Bhat, Advocate

**Mumbai**, dated the 6<sup>th</sup> March, 2017

**AWARD**

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-42025/4/2007 – IR (DU) dated 16.05.2007. The terms of reference given in the schedule are as follows :

“Whether the contract between the first Respondent i.e. Department of Atomic Energy and the existing Contractor is a sham and bogus one and is a camouflage to deprive the workmen of benefits available to permanent workmen of the first Respondent ? “

“Whether the workmen (as per Annexure) employed in the first Respondent Department of Atomic Energy should be declared as permanent workmen of Department of Atomic Energy ?“

“What are the wages and consequential benefits to be paid to the workmen ?”

2. Anushaktinagar & Mandala Township Garden Employees Union (hereinafter referred to as “Union”) filed Writ Petition bearing No. 1155 / 1996 in the Hon’ble Bombay High Court praying for the directions to the employer to treat all the workmen concerned with the petition as regular and permanent employees with retrospective effect from the date of their initial appointments and to pay them all the benefits, wages and privileges with retrospective effect. The said Writ petition was dismissed by the Hon’ble Division Bench of Bombay High Court directing the Central Government to refer the demand raised by the union to Industrial Tribunal for adjudication within 2 months from the date of order dated 6.11.2001. Pursuant to the directions given by Hon’ble Division Bench, the Central Government has referred the matter for adjudication to this Tribunal in respect of concerned workmen. The list of workmen as per Annexure – Ex. ‘A’ is given below:

Sr. No.	Name	No. of years of service
1.	Ashok Jadhav	11 Yrs.
2.	B. Mallesh	11
3.	C.P. Shivam	10
4.	Sakaram Gavali	10
5.	Babasaheb B. Maske	11
6.	Ashok Kamble	7
7.	Babasaheb Savant	11
8.	Subash More	15
9.	Randhir Lokhande	12
10.	Daji C. Sabale	12
11.	Vilas Misal	13
12.	Chandrakant Malayankar	16

13.	Anil Jadhav	10
14.	Rajendra Kante	12
15.	Trimbak Salvi	11
16.	Bhagwan Aire	11
17.	Janardhan Kambale	11
18.	Anand Kambale	13
19.	Subhash Patekar	10
20.	Mansur Makandar	14
21.	Sharad Nilalje	11
22.	Chandrakant Putak	11
23.	Kishan Gaikwad	11
24.	Kaxnab Sgubde	12
25.	Sambhaji Wagh	11
26.	Pandurang Putak	11
27.	Tanaji Londhe	11
28.	Indrasen Garud	13
29.	Dattaram Patil	11
30.	Ganpat Kadam	11
31.	Shrimant Malkappa	11
32.	Kernath Kambale	11
33.	Raju Gaikwad	11
34.	Visram Jadhav	11
35.	Vikram Sonavane	11
36.	Pandurang Patil	11
37.	Dinesh Birade	12
38.	Vishwanath Laxman S.	12
39.	Tukaram Maruti	115
40.	Raju Chavan	20
41.	Krishna Kupuswami	20
42.	Om Prakash	11
43.	Ramzor Yadav	23
44.	Sandipan More	20
45.	Rama Swami	20
46.	Rama Chavan	21
47.	Nandkumar S.	15
48.	Osai Mani Mayavan	13
49.	Rajendra Dalvi	15
50.	Pradeep Patil	15

51.	Ekadas	20
52.	G. Elumalay	8
53.	Shekhar M.	10
54.	Rajaram Moreshwar	12
55.	Mohan Bhagwat	13
56.	Seloraj	13
57.	Abdul Ismail	15
58.	P. Muttu Krishna	11
59.	Pumalay	10
60.	C. Kolanji	9
61.	Bhagaji Dattu	11
62.	Ravi Kupuswamy	14
63.	Jaji Malang	9
64.	Vasant Patel	15
65.	Babu More	20
66.	Chila Muttu	21
67.	Kulia Daku	15
68.	K. Anbalagam	10
69.	Chandrakant Patil	10
70.	M. Kolanji	10
71.	Laxman Kokare	8
72.	Kondiba Sitaram	10
73.	Vijay Dolas	5
74.	Deepak Abhang	5
75.	V. Govindraj	4
76.	Balu T. Salvi	4
77.	Anwar B. Jamdar	4
78.	S. Kumar	3
79.	Ramesh Veramani	3
80.	Pandurang V. Gule	3
81.	Milind Kamble	3
82.	Shankar Sarvagod	3
83.	Sushila Ramchandar	16
84.	Indrayani Sakahari	17
85.	Kalavati B.V.	17
86.	Gangubai M.B.	18
87.	Dwarka Pol	11
88.	Nanda Humare	11

89.	Sonabai Dekhane	20
90.	Taramati Kadam	20
91.	Lila Chaudhari	15
92.	Mehabubi Makandal	14
93.	Babai Patekar	15
94.	Pupate Tangwel	20
95.	Droupat Bansode	11
96.	Bhagabai Chavan	11
97.	Ashabai Patekar	11
98.	Chaturbai Bhosale	11
99.	Kalpana Mhaske	12
100.	Ramabai Sirsat	12
101.	Indu L. Kshetry	11
102.	Kusum Gaikwad	11
103.	Shahubai Waghmare	11
104.	Gangubai Kawankar	15
105.	Shafiya Rajak	18
106.	Teja Gaikwad	11
107.	Kasha Bai Gharat	9
108.	Sangeeta B. Kamble	7
109.	Kasturi P.	14
110.	Sheela B. Naik	12
111.	Shantabai Gaikwad	11
112.	Sindhu Salvi	11
113.	Chinu Dunnu	20
114.	Sarsabai Mani	25
115.	Trevanabai B.	24
116.	Sonabai V.S.	15
117.	Sayavva K.	20
118.	Saanubai G.B.	27
119.	Gurubai M.	26
120.	Kamlabai Girmal	20
121.	Suman Donde	21
122.	Ambava Mariappa	22
123.	Aria K. Eshwan	15
124.	Parvati R.	16
125.	Hirabai Eranna	18
126.	Jijabai Maruti	23

127.	Bhurabai Chavan	22
128.	Chaya V. Patil	15
129.	M. Laxmi	15
130.	Miniamma R.	20
131.	Chilamma A.	18
132.	Sugandha Govind	21
133.	Suman Shivaji	15
134.	Rajeshwari M.T.	20
135.	Sukumar S.W.	15
136.	Almel Krishnan	15
137.	Shanty V.	11
138.	Kullama Karel	18
139.	Ragani Rayar	15
140.	R. Navama	12
141.	Anandi P. Patel	18
142.	Sheetabai R. Dalvi	23
143.	Saroja Peraswami	11
144.	Indumati Tambe	12
145.	Karpay Mani	10
146.	Laxmi Selvaraj	10
147.	Punamal Chalamuttu	20
148.	Anjama T.	9
149.	Kodipavan R.	4
150.	Punjalalay R.	3
151.	Hausabai Yadav	15
152.	Maruti Motaling	00
153.	Gopinath S. Mane	N.A.
154.	Janardhan Mane	”
155.	Dattaram Mhatre	”
156.	Abdul Gani	”
157.	Sripat Dhede	”
158.	Manik Gaikwad	”
159.	Shamrao Sartabe	”
160.	Barkya Gomane	”
161.	Shankar Pawar	”
162.	Ganpat Kodare	”
163.	Pandhari S.	”
164.	Narayan Gavare	”

165.	Ravi Hari Dalvi	”
166.	Sunil S. Dhede	”
167.	Baban Zore	”
168.	Budhappa Malappa	”
169.	Maludaya Daki	”
170.	Namdeo Misal	”
171.	Sudhakar B.	”
172.	Anil M.S.	”
173.	Muniyan Kotiyan	”
174.	Atmaram Patel	”
175.	Suman M.G.	”
176.	Rupa Kambale	”
177.	Kalavati Sawant	”
178.	Yashoda G.	”
179.	Subhadra G.	”
180.	Asha V.S.	”
181.	Anjana P.	”
182.	Gunabai K.	”
183.	Gumphabai W.	”
184.	Koushalya D.	”
185.	Muktabai S.	”
186.	Chandra Bhaga D.	”
187.	Laxmi Yadav	”
188.	Savitri M.	”
189.	Sakubai Parmar	”
190.	Babai Sartape	”
191.	Ratnabai Pawar	”
192.	Bhimadai Mukani	”
193.	Shantabai D.	”
194.	Wachala S.	”
195.	Anusaya W.	”
196.	Sakubai Aihad	”
197.	Samabai Sagate	”
198.	Chandrabai Kasare	”
199.	Kaveri	”
200.	Shivgani Balraj	”
201.	Kerabai Payar	”
202.	Meena I.J.	”

203.	Meena R.J.	”
204.	Sojabai S.	”
205.	Fatima Abdul	”
206.	Kusum Zarekar	”
207.	Ramjan Bee	”
208.	Suman P.G.	”
209.	Jayabai Thakur	”
210.	Meena D.J.	”
211.	Laxmi Mahavir	”
212.	Kannama	”
213.	Hirabai F.D.G.	”
214.	Ranjana D.	”
215.	Vimal B.S.	”
216.	Hemlata R.T.	”
217.	Ahilayabai N.T.	”
218.	Laxmi K. Mayavan	”
219.	Ishu Shaikh	”
220.	Sarasvati Mistari	”

3. After the receipt of the reference, both the parties were served with the notices. They appeared through their respective representatives. Second party union filed statement of claim Ex.12. According to the union, Atomic Energy Department of India has set up the establishment in Mumbai by name Bhabha Atomic Research Centre. Entire Bhabha Atomic Research Centre is located in the vast land of Trombay. There are two portions of the said area, one of Atomic Reactor by name ‘Apsara’ and offices and other establishments are located in the second portion consisting of residential premises where the employees working in Bhabha Atomic Research Centre are given quarters during the period of their employment in Bhabha Atomic Research Centre. There is small hillock and gate between residential quarters and office and Reactor establishment. Department of Atomic Energy has set up a separate unit by name Directorate of Construction Services and Estate Management. DCSEM is entrusted with the entire management and control of the area where not only the residential quarters are located but some offices of Department of Atomic Energy, school and hospitals of the employees of Department of Atomic Energy are located. It was considered necessary to maintain the green belt in and around the reactor. It was also considered necessary that growth of wild grass in the area should be controlled or otherwise. It is likely to be infested by snakes. Maintenance of the quarters is done by the regular employees of the management. As far as house-keeping is concerned, part of the work is done by regular employees of the management, rest being done by alleged contractor workmen.

4. According to the union, Anushakti Nagar and Mandela is located on huge track of land. There are thousands of trees besides lawns and gardens in that area. There are more than hundreds of such lawns and gardens in that area. The workmen concerned with the reference are working in this area. Department has appointed Engineers and supervisors who supervise the work of the concerned workmen. Planting small flowering plants around the trees, laying down the lawns and maintaining the existing lawns including periodical mowing of the lawns etc. are the duties of the concerned workmen with the reference.

5. According to the union, in the premises where the reactor and the office and other establishments are located there are gardens. The work which the workmen concerned with this reference in respect of office area and reactor area is doing by the regular workmen employed by the management. These regular workmen are directly appointed by the management. There are five categories viz. Mali-A, Mali-BC, Mali-D, Trade Man-A and Trade Man-B. The workmen directly employed by the first party employer are required to look after the work of 1000 per sq. mtrs. per employee but the workmen concerned are required to look after 2000 per sq. mtrs. per employee. As such the concerned workmen have joined from 1982 onwards. Most of the workmen concerned with reference have been working with the first party employer for more than 20 years continuously though purported contractors keep changing.



6. According to the union, the management issues tenders on yearly basis. Scope of the work is mentioned only as maintenance of residential area grounds and play field of the various areas of the township. Though the workmen are working through the purported contractors, none of the contractors attend the work on daily basis. Supervisors are employed who are required to mark attendance of the workmen and give report of the work done. Actual work, however, is done under the supervision of regular employees of the management. The management has appointed garden incharge who looks after all the gardens located in Anushakti Nagar and Mandela premises. There are two supervisors who are regular employees of the management viz. Rahul Patil and Pansare. There is one Mali Shri Ram Babu who is in Trade Man-A grade who gives instructions on daily basis as to what work is to be done. On the basis of report of the supervisors, the department maintains the attendance register of the workmen concerned.

7. It is thus, the case of the union that the purported contracts are sham and bogus. The workmen concerned have been working for more than 20 years without any break. They are working under the direct control and supervision of the regular workmen of the department. The nature of work is perennial and the requirement of Section 10 are duly complied with as a Committee is set up for this purpose. As such workmen concerned with reference are infact and in law are permanent workmen of the Atomic Energy Department of Government of India. They are therefore asking to declare that the contract is sham and bogus and is camouflage to deprive the workmen of benefits available to the permanent workmen of the department and to declare that the concerned workmen are permanent workmen of the Department of Atomic Energy from the date of their initial appointment. They are also asking for direction to the department to pay & other benefits as are applicable under service condition prescribed for permanent workmen and to direct the first party employer to pay each of the workmen concerned with reference, gross emoluments payable at the initial stage of lower grade of the workmen working in the employment of first party employer.

8. First party management has resisted the claim by filing written statement Ex.14. According to the first party management this tribunal has no jurisdiction to try and entertain the present dispute as the first party management is Government of India, Directorate of Construction Services and Estate Management is purely Central Government department. It is not termed as Industrial Dispute since first party management is a service unit under the Department of Atomic Energy. As such the first party management is not an industry under I.D. Act, 1947.

9. It is then contention of first party management that the concerned workmen were never required to be engaged for any work of continuous nature. The work relating to clearing the gross, bushes and other wild vegetation in the play field around government residential buildings was contracted out to the contractors from time to time on competitive basis. The work so contracted out is of seasonal nature which could be carried out through contractors. The first party management issued tenders for various works and contractors employed such workers to complete the contract. The concerned workmen were neither engaged for the work of regular nature nor their services were required on continuous basis. They have been engaged merely to comply with the Hon'ble High Court's order dated 6.11.2001 irrespective of availability of work or otherwise. So as far as labours engaged by the contractors for carrying out the contracts awarded are concerned, Directorate holds status of principal employer under the Contract Labour [Regulation & Abolition] Act, 1970. Thus the Directorate does not have any control over the workers except as required by the principal employer to ensure that the minimum wages of the persons employed by the contractor are paid by it at the rates prescribed by the provisions of Minimum Wage Act. Contract between parties requires fulfillment of its terms in its totality and is not limited to the strength of the labour engaged by the contractor. The concerned workmen are not doing the work of regular nature. Hence the workmen cannot claim the continuous service of more than 20 years in the department since the contractors of the department are engaging the workmen to do the work available in the department limited to 3 – 4 times in a year.

10. It is also contention of first party management that the department does not maintain any attendance register. The payment to the contractor is made on the work done basis as per the CPWD works procedure. The work order is issued to the contractor directly who in return will ensure proper compliance of the work by the labours. Supervisors have been engaged from both the sides that from the contractor and principal employer to ensure that the work is done as per contract. However, the payment of monthly wages is ensured by DCSEM in presence of officers of the department only to ensure that provisions under the Minimum Wage Act and that of the Contract Labour [Regulation & Abolition] Act, 1970 are complied with by the contractor.

11. It is thus contention of first party management that the contract is genuine. It is not sham and bogus since the prescribed procedures are being followed before awarding the contract.

12. It is also contention of first party management that it has to strictly follow the procedure for recruitment of category of workmen / staff as per the guidelines of Government of India. Applications should come through employment exchange in response to the newspaper advertisement to fill any vacancy. They are first screened, short listed and thereafter subject to medical examination, verification of the antecedents through police and thereafter the appointment orders are issued. None of the concerned workmen have undergone the said procedure and therefore they are not entitled for regularization. The first party management thus sought for dismissal of reference with costs.

13. The second party filed rejoinder Ex.15. They have replied the new points raised by the first party management in the written statement. They have denied all the allegations made in the written statement and reiterated the contentions of statement of claim.

14. The following issues are framed at Ex.21. I produce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether the contract between the first party i.e. Department of Atomic Energy and Contractor is sham, bogus and a mere camouflage to deprive the workmen of the benefits of permanent workmen ?	Yes
2.	Whether the employees under reference are permanent employees of the party No.1 and are entitled to the benefits of permanent employees ?	Yes
3.	Whether the workmen under reference are entitled to any other relief ?	Yes, As per final order
4.	What Order ?	As per final order

Sr. No.	Additional Issues	Findings
1	Whether the first party is an 'industry' as defined under Industrial Dispute Act, 1947 ?	Yes
2.	Whether the second party has locus-standi to represent all the concerned workmen in this reference ?	Yes

## REASONS

### Additional Issue No.1

15. So far this issue is concerned, the pleadings of the first party management in the written statement are to the effect that Bhabha Atomic Research Centre is part of the Department of Atomic Energy under the Prime Minister's office at Delhi. The department is for specific research and therefore it is sovereign function.

16. However, in this respect if we see the evidence of first party, it has come on record that Bhabha Atomic Research Centre is involved in several commercial activities such as isotopes which are supplied to the hospitals. In his evidence Dr. Jagan Mohan Rao has stated that Bhabha Atomic Research Centre carries on its work in a systematic manner with the assistance of employees and also engaged in commercial activities.

17. There are three tests to consider whether the establishment or an undertaking is an industry or not ? they are,

1. existence of systematic activity
2. cooperation between employer and workmen
3. produces goods and services for the benefits of society.

In this respect hand can be laid on the decision in case of Bangalore Water Supply & Sewerage Board V/S. A. Rajappa 1978 LAB IC 467.

18. From the evidence of Dr. Jagan Mohan Rao, it is clear that apart from research, Bhabha Atomic Research Centre is also involved in other commercial activities such as isotopes which are supplied to the hospitals. He also stated that the activities are conducted in a systematic manner. Atomic power generated in Apsara is supplied and isotopes supplied to the hospitals by Bhabha Atomic Research Centre are used for the treatment of the patients especially suffering from cancer. Bhabha Atomic Research Centre has thus satisfied the above tests laid down by the Hon'ble Apex Court in the decision cited supra. It can be said therefore that atomic energy is not a sovereign function. All matters related to atomic energy are looked after by the Central Government only because the defence and international regime is relating to atomic energy. Defence and collection of taxes are only two sovereign functions. All other

activities carried on by the Central Government and its agencies or the departments do not constitute sovereign functions.

19. That apart the submission is that the residential buildings where the employees of first party reside are part of the undertaking of Bhabha Atomic Research Centre and are not separate and independent entity. But then the fact remains that these residential buildings where the employees of first party employer reside is constructed and maintained by the Bhabha Atomic Research Centre and the houses therein are allotted to the employees of the first party. Even the maintenance of the residential buildings is part & parcel of functioning of Bhabha Atomic Research Centre. In view of this it can also be said that the first party is an industry as defined under Industrial Disputes Act, 1947. This issue is answered accordingly in affirmative.

### **Additional Issue No.2**

20. So far this issue is concerned, it is a matter of record that Anushaktinagar & Mandala Township Garden Employees Union had filed WP No. 1155/1996 in the Hon'ble Bombay High Court praying for the directions to the employer to treat all the workmen concerned with that petition as regular and permanent employees with retrospective effect from their dates of initial appointment and to pay them all the benefits and wages and privileges with retrospective effect. The copy of judgment of Hon'ble Division Bench of the Bombay High Court in WP No. 1155/1996 shows that the said writ petition came to be dismissed with the following order,

“(1) The appropriate Government i.e. the Central Government (as agreed to by both the learned Counsel) is directed to make a Reference of the following demand to the Industrial Tribunal for adjudication within two months from today :-

- (i) Whether the contract between the first Respondent i.e. Department of Atomic Energy and the existing Contractor is a sham and bogus one and is a camouflage to deprive the workmen of benefits available to permanent workmen of the first Respondent ?
- (ii) Whether the workmen employed in the first Respondent Department of Atomic Energy should be declared as permanent workmen of Department of Atomic Energy ?
- (iii) What are the wages and consequential benefits to be paid to the workmen ?

(2) The Industrial Tribunal should then decide the Reference as expeditiously as possible and in any event not later than December 2002.

(3) By way of interim orders, the workmen at Exhibit “A” to the Petition have been continued in employment and have been directed to be paid Rs.4000/- (Rupees Four Thousand only) per month. These orders shall continue pending the disposal of the Reference by the Industrial Tribunal.

No costs.”

21. In view of the order Central Government has made the reference to this tribunal. Obviously therefore second party union has locus-standi. This issue is answered accordingly.

### **Issue No.1 to 3.**

22. It is submitted by the first party management that the workmen under reference are contract labours since DCSEM is awarding the contracts by inviting public tenders and the Directorate does not have any control over the workers except as prescribed by the principal employer to ensure that the minimum wages of the persons employed by the contractor are paid by it at the rates prescribed under the provisions of Minimum Wage Act. The contractors are required to pay wages to them and also require to observe the compliance of all applicable labour laws such as ESIC, PF etc. It is mainly the contention of the management that the privity of contract is between the first party management and the contractor only. In view of these pleadings it is to be seen whether the contracts are genuine or not ?

23. We have documents showing that the work orders were issued by the first party management. Ex.41 is the copy of work contract signed by Shri K.B. Rao. Ex.42 is document in respect of terms & conditions of the contract. Ex.43 is also a contract agreement signed by Shir K.B. Rao, the Head of Engineering Department. Ex.44 to 50 are various work contracts for various areas and have different time and contractors. Ex.51 – 54 are the licences of labour contracts issued by the Labour Commissioner. Ex. 55 – 54 are specimen bills of some of the contractors. Ex.59 [collectively] are the letters by the contractor with proforma annexed therein bearing signatures of the contractors. Under the circumstances, it is submitted by the first party management that the contacts cannot be called mere paper work, sham or bogus as has been contended on behalf of the second party.

24. However, it is throughout the case of second party that they the employees of the company and contractors are inducted subsequently to deprive them from getting their legitimate rights. It is the case of second party that the

concerned workmen have been employed continuously to do the work of landscaping, horticulture, tea planting and environmental maintenance in the establishment of first party Respondent at Anushakti Nagar, Mumbai. They have put in long period of continuous service. Though the contractors have been changed they are continued to be in service since they are directed to work under various contractors.

25. For, it is explicit that in his cross examination, specific question was asked to witness of the management viz. Gautam Shrihari Karwade. He replied that he does not know since when the work is being done through the contractor. He even admits that the officers of the first party management used to give directions for the work to the contractors and officers of the first party management used to remain present when the contractor make payment to the workmen. He does not know whether the concerned workmen are working since last 30 – 40 years.

26. The documents in respect of the labour contracts are of recent years pertaining to the year 2011, 2012, 2013. Even it is admitted that since last 15 years there are two contractors. They are Subhash Garden and Tarun Enterprises. That indicates that the concerned workmen were working since prior to the awarding of the contract to these two contractors. It also indicates that since before 30 – 40 years, even prior to 10 to 25 years of filing of WP No. 1155/1996 the concerned workmen were recruited directly by the company and under full control of company for all purposes. Subsequently, the contractors were inducted.

27. In this respect, General Secretary of the union has stated vide Ex.26 that the concerned workmen have been working for nearly 30 years and when the writ petition came to be filed there were in all 220 workmen. According to him the concerned workmen were working in the garden maintained by Department of Atomic Energy in Anushakti Nagar. The garden is spread over in an area admeasuring 4.70 lakhs sq. mts. And as such the work that concerned workmen are doing is of perennial nature. It is also clear from his evidence that Mr. Khan is overall incharge of the garden. There are two supervisors viz. Rahul and Pansare and they are the employees of first party management. To be precise, his evidence is that the actual work is being done under the direct supervision & control of the officials of the first party management. The employer who use to maintain the attendance record of the workmen concerned with the reference and also supervise the work of the concerned workmen. This sort of evidence has not been rebutted in cross examination even though it was tried to believe that he does not have personal knowledge since he has not worked in the premises of Anushakti Nagar.

28. However, in this respect, Committee was constituted to go into the question of abolition of contractor labour system for the work carried out by the concerned workmen pursuant to resolution dated 18.2.1997, 14.5.1997 and 26.8.1997. A copy of Committee report has been placed on record on Ex.16, page 2 to 17. Committee has held that the first party management is required to maintain greenery in the form of garden and forest in its premises in view of risk of radiation. As far as nature of work done by the concerned workmen has been specifically mentioned in the report. Ex.44 therefore clearly mentions about the nature of work done by the concerned workmen showing that there is substantial work requiring the employment of substantial number of workmen throughout the year. In view of the recommendations of the Committee also it can be said that the concerned workmen were employed for doing perennial nature of work which is an essential part of the activity of the first party management. They are directly controlled and supervised by the office of the first party management hence after veil is lifted there is no doubt that the entire work of the concerned workmen is supervised and controlled by the office of the first party management.

29. Even as per the contention of the first party management, the contractors are required to comply with the statutory provisions of law such as registration as contractor, availing PF & ESIC benefits etc. to the workmen and the management ensures that the contractors are doing so. It is also the contention of the first party management that the offices of the first party management supervise the work carried out by the contractors to ensure that the contractors carry out the work in terms of conditions of contract and that they do not commit any breach. Officers of the first party management use to take joint measurement of the work done and verify the bills of the contractors. It is the contention of the first party management that the contractors are required to obtain the license from Government of India, Ministry of Labour & Employment under Contract Labour [Regulation & Abolition] Act, 1970. But then the evidence shows that the licenses obtained by contractors viz. Subhash Garden and Tarun Enterprises are for the years 2012 onwards. When on the contrary it is the contention of the first party management that the contractor Shiv Kumar Enterprises engaged the concerned workmen in 1990 and the contractors were asked to obtain license. Admittedly prior to 2012 there was no licence. There is no any registration nor any licence hence there is no contract system at all as contemplated in Contract Labour [Regulation & Abolition] Act, 1970.

30. In view of this, it is the submission of the second party workmen that they are direct employees of first party employer. Learned Counsel for the second party also submitted that in such circumstances concerned workmen who are shown contract labours by the first party employer can very well raise the industrial dispute. In support of his argument, learned counsel resorted to Apex Court ruling in Steel Authority of India Ltd. V/S. Gujarat Mazdoor Panchayat 2004 II LLJ 970 wherein the Hon'ble Court observed that,

“position of law which emerges from reported decision of the Supreme Court is that workmen working under contractor are entitled to raise a demand that they should be declared as workmen of the Principal employer. It is always open to the workmen concerned to place material before the industrial adjudicator to show that contract between principal employer and the contractor is sham and not genuine and claim declaration that they were always the employees of the principal employer and are entitled to appropriate service condition”.

31. Relying upon above Apex Court judgment, Hon’ble Bombay H.C. in *Sudharshan Chemical Industries Ltd. V/S. Labour Commissioner and Ors.* 2013 III CLR 530 observed that,

“where contract was found sham and nominal rather a camouflage in which case contract labourer working in the establishment of the principal employer was held infact and in reality the employee of principal employer himself. Indeed such cases do not relate to abolition of contract labour but present instances wherein the court pierced the veil and declared the contract position as a fact at the stage after employment of contract labour stood prohibited”.

32. In para 6 of the judgment by referring the Apex court ruling the Hon’ble court observed that

“thus in substance the Apex court held that when the contract is found to be sham and camouflage question of abolition of contract labour does not arise in as much as in reality contract does not exist. In such cases the employees who are allegedly shown as employees of contractors are infact the direct employees of the principal employer”.

33. The Learned Counsel for the first party submitted that though the workmen had worked for 240 days in a year their appointment was not from the regular stream of appointment and therefore they are not entitled for regularization. He seeks to rely on the decision of *Dena Bank V/S. Ashraf Yalu Shaikh* 2009 III CLR 426 to submit that since the appointment of the concerned workmen was not from the regular stream of appointment they are not entitled to reinstatement but only compensation has envisaged under section 25F of I.D. Act, 1947.

34. He also seeks to rely on the decision in case of *Surender Prasad Tiwari V/S. U.P. Rajya Krishi Utpadan Mandi Parishad* 2007 (I) ALL MR 461 to submit that temporary employee appointed dehorn rules. The court cannot realize such services. In constitutional scheme there is no room for back door entry in the public service.

35. He also seeks to rely on the decision in case of *M.P. Housing Board and Anor. V/S. Manoj Srivastava* 2006 (2SCC 702) to submit that the daily wager does not hold the post to drive any legal right in relation thereto unless he is appointed

1. against duly sanctioned vacant post
2. upon following statutory law operating in the field.

If the appointment made in contravention of earlier either 1 or 2 such appointment would be void.

36. He also seeks to rely on the decision in case of *Security State of Karnataka and Ors V/S. Umadevi & Ors* 2006 II CLR 261 to submit that temporary or the contract labours cannot be regularized in public service. It will amount to back door entry as they are not recruited by following recruitment process.

37. In this respect, the Learned counsel for the second party submitted that in the case cited supra the workmen had sought for abolition of contract labour system and for regularization of contract workmen which cannot be allowed. The concerned workmen are working for first party continuously for more than 30 - 40 years. The management has violated the principle of ‘equal pay equal work’. Moreover, the work performed by these workmen are of perennial nature and required to be performed by permanent employees. First party has not even taken care to seek for permanent post for doing such perennial work and therefore rulings referred are not attracted to the facts of the present case wherein the workmen are not employees of the contractors but are the employees of first party management and they are doing the work of perennial nature for more than 30 - 40 years.

38. In my considered view even if the documents pertaining to contracts are being taken into consideration then the fact remain that the first party management has changed contractors from time to time but then despite the change of the contractors, the workmen concerned are continued to work. From the evidence the fact remains that the concerned workmen are working since long 30 – 40 years. They are continued even the contractors were changed. The work is supervised by the officers of first party management as and when required. In view of that it can be said that first party management start inducting contractors subsequently and therefore the contractors inducted subsequently are sham & bogus and mere camouflage to deprive the workmen of the benefits of the permanent workmen.

39. On this point the Learned counsel for the second party workmen submitted that as various contracts entered into are found to be sham and bogus and workmen are found to be the employees of first party and they are working continuously for years together, they are entitled to get pay and allowances at par with employees of same cadre. In support of this argument Learned counsel for the second party seeks to rely on the decision of *U.P. Electricity Board V/S. Puranchandra Pandey & Ors.* 2008 (115) FLR 1172 wherein the Hon’ble H.C. observed that,

“in our opinion the decision of Umadevi’s case is clearly distinguishable. The said decision cannot be applied to case where regularization has been sought for in pursuance of article 14 of the constitution.”

40. Learned counsel for the second party workmen also seeks to rely on the decision in case of G.M., ONGC Chilchar V/S. ONGC Contractual Workers Union 2008 AIR SCW 96 to submit that award of the tribunal holding the workers to be the employees of principal employer and granting the relief of regularization is not outside the jurisdiction. In para 13 of the judgment it has been observed that,

“real issue was as to status of the workmen of employees of ONGC or of the contractor and it having been found that the workmen were the employees of ONGC, they would be ipso-facto be entitled to all benefits available in that capacity and the issue of regularization to their pale into insignificance. We find that in this situation the industrial tribunal and the Division Bench of H.C. were justified in lifting the veil in order to determine the nature of employment in the lights of judgment quoted above. We therefore find that judgment in Umadevi’s case would not be applicable and the facts of Pandey’s case are on the contrary more akin to the facts of the present case”.

41. Learned counsel for the second party workmen submitted that in the light of facts & circumstances of cases and the above Apex court rulings, direction is required to be issued to the employer to regularize the services of concerned workmen. In support of his argument the Learned counsel for the second party workmen also cited Apex court ruling in Steel Authority of India & Ors. V/S. National Union Water front Workers & Ors. 2001 III CLR 349 SC wherein in para 121 (5) the Hon’ble court observed that,

“if the contract is to be found not genuine but a mere camouflage the so-called contract labourer will have to be treated as employees of principal employer who shall be directed to regularize the services of the contract labourer in the concerned establishment subject to the conditions as may be specified by it for that purpose”.

42. The Learned Counsel for the first party seeks to rely on the decision in case of Gujarat Electricity Board V/S. Hind Mazdoor Sabha & Ors. 1995 (5 SCC 27) to submit that the appropriate government vests with the authority to abolish the genuine labour contract.

43. He also seeks to rely on the decision in case of Madhyamik Shiksha Parishad UP V/S. Anil Kumar Mishra & Ors. 2005 (5 SCC 122) to submit that the status of the workmen cannot be envisaged for ad-hoc appointees on analogy with the provisions of I.D. Act, 1947 importing the instance of completion of 240 days work, completion of said period of work does not import the right to regularization.

44. He also seeks to rely on the decision in case of International Airport Authority of India V/S. International Aircargo Workers Union & Ors. 2009 (13 SCC 374) to submit that whether labour contract was not genuine or sham, such dispute is maintainable before the industrial adjudicator even if there is no notification for abolition of contract labour under section 10 (1) of CLRA Act, Industrial adjudicator can declare that so-called contract labours are infact the direct employees of principal employer and contract is only a camouflage to deny employment benefits to employees. If, however, the contract is genuine and there is also no notification abolishing the contract labour under section 10(1) the principal employer cannot be directed to absorb the contract labour.

45. In the instant case there is no notification abolishing the contract labour but the finding of the fact is that contract is not genuine and therefore the principal employer can be directed to absorb the contract labour.

46. In the light of above discussion, I hold that periodical labour contracts of various contractors with the first party management are found to be sham and bogus and mere paper work and therefore the employees under the reference are entitled for regularization of their respective services from completion of 240 days in their respective services. They are also entitled to wages and other benefits as applicable under service conditions prescribed for permanent workmen. The above issues are therefore answered accordingly as indicated each of them in terms of above observations. Thus the order.

### ORDER

- “1. Reference is allowed with no order as to costs.
2. First party management is directed to regularize the concerned workmen with effect from respective dates of completing 240 days in the service in the premises of Bhabha Atomic Research Centre and pay them the arrears of wages and other benefits applicable to permanent workmen of the centre.
3. Award be passed accordingly.”

Date: 06.03.2017

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 13 अप्रैल, 2017

**का.आ. 1017.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंटरनेशनल एयरपोर्ट अथॉरिटी ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 103/1988) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.04.2017 को प्राप्त हुआ था।

[सं. एल-11012/4/87-डी.II(बी)/डी.III(बी)]

राजेश कुमार, अवर सचिव

New Delhi, the 13th April, 2017

**S.O. 1017.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 103/1998) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. International Airport Authority of India and their workman, which was received by the Central Government on 10.04.2017.

[No. L-11012/4/87-D.II(B)/ D.III(B)]

RAJESH KUMAR, Under Secy.

**ANNEXURE**

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

**ID No. 103/1988**

Shri Yashpal Tanwar,  
S/o Shri Charan Singh Tanwar,  
R/o C-58, INA Colony,(AAI),  
New Delhi 110 023

...Workman

**Versus**

The General Manager,  
International Airport Authority of India  
I.G.I.A., New Delhi

...Management

**ORDER**

This application has been filed by the workman under Rule 28 of the Industrial Disputes (Central) Rules, 1957 for correction of award dated 26.11.1997. It is averred in the application that award was passed by the Hon'ble Presiding Officer by allowing the petition and clerical error has occurred therein. The applicant now wants that in para 2, the words 'of 29.07.1978' be added just after 'The workman in his statement ..... Similarly, pay scale of the workman is required to be corrected from 210-360 to '260-350'. Applicant also wants that the words 'w.e.f. 01.06.1981' is required to be added to the very end of the para 9, just after '.....to be reinstated'.

2. The application has been supported by affidavit. Notice was served upon the management, who did not put in their appearance.

3. After hearing learned A/R for the claimant on the application and perusal of the award, I am of the view that application deserves to be allowed. It is clear from perusal of the advertisement published in the Gazette of India, No.52 dated 29.07.1978 that the pay scale of Switch Board Attendant is mentioned at Serial No.6 of the advertisement and the same is Rs.260-350. Similarly, date of termination of the workman herein is admittedly 01.06.1981 as is clear from order dated 27/28.09.1988, Annexure A, wherein Shri Tanwar was terminated on 01.06.1981.

4. Since the errors mentioned above are accidental or clerical in nature, as such, this Tribunal is competent to rectify the same in view of the powers vested with this Tribunal under Rule 28 of the Industrial Disputes (Central) Rules, 1957. Resultantly, application is allowed and it is held that in para 10 of the award, pay scale of the workman is liable to be corrected as Rs.260-350 instead of Rs.210-360 and is also held that the date of termination of the workman is 01.06.1981 and not 30.09.1988. Consequently, it is held that date of termination of the workman in fact is 01.06.1981 instead of 30.09.1988 as mentioned in the concluding part of para 10 of the award dated 26.11.1997.

5. Copy of this order be also tagged with the main award.

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

**ID No. 103/1988**

Shri Yashpal Tanwar, S/o Shri Charan Singh Tanwar,  
R/o C-58, INA Colony (AAI),  
New Delhi 110 023

...Workman

**Versus**

The General Manager,  
International Airport Authority of India,  
I.G.I.A., New Delhi

...Management

**ORDER**

This application has been filed by the management under Rule 28 of the Industrial Disputes (Central) Rules 1957 for correction in award dated 26.11.1997 in ID No.103/1988 titled 'Yashpal Tanwar Vs. International Airport Authority of India'. It is averred in the application that vide award dated 26.11.1997, workman was ordered to be reinstated with full back wages and continuity of service from 30.09.1988 upto the date of his reinstatement with all benefits attached to this post. After a period of 18 years, earlier the workman filed an application under Section 28 of the Industrial Disputes (Central) Rules 1957 for rectification of certain clerical errors. In fact, workman wanted time-scale to be corrected from Rs.210-260 to Rs.260-350. This Tribunal vide order dated 19.11.2015 allowed the said application and held that the workman is entitled to the pay-scale of Rs.260-350 instead of Rs.210-260. In fact, this Tribunal has allowed correction of error in para 10 of the award dated 26.11.1997, whereas perusal of the main award shows that there is no mention of the time-scale therein. In fact, it is in para 2 of the main award that there is mention of pay-scale of the workman. Finally, it is prayed in the application that the above error be rectified by deleting the time-scale which has been inserted by this Tribunal in its order dated 19.11.2015.

2. No reply has been filed by the workman to the above application.

3. I have heard Shri Arvind Kumar, A/R for the claimant and Shri Digvijay Rai, A/R for the management.

4. It is neither in doubt nor in dispute that this Tribunal has powers under Rule 28 of the Industrial Disputes (Central) Rules, 1957 to correct any clerical mistake or error arising from accidental slip or omission in any proceedings, report, award or order passed by this Tribunal. There is no legal bar to even file more than one application for correction of such error or mistake, if facts and circumstances of the case so warrant. Learned authorized representatives for the respective parties during the course of arguments, in all fairness, conceded that there is no mention of pay scale of Rs.210-360 in para 10 of the main award dated 26.11.1997. Instead, there is mention of pay scale of Rs.210-360 in 4<sup>th</sup> line of para 2 of the main award dated 26.11.1997. In para 10 of the award passed by my learned predecessor, there is no mention of any pay-scale of Rs.210-360. Therefore, observations made by this Tribunal in its order dated 19.11.2015 in para 4 to the effect that 'It is held that in para 10 of the award, pay scale of the workman is liable to be corrected as Rs.260-350 instead of Rs.210-360' is liable to be corrected to the extent that instead of 'para 10' the word 'para 2' is ordered to be substituted and corrected. Resultantly, application is allowed and it is held that in para 2 of the award dated 26.11.1997, pay scale of the workman is liable to be corrected as Rs.260-350 instead of Rs.210-360. Accordingly, application is allowed in the above manner.

5. Copy of this order be also tagged with the main award.

June 22, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 17 अप्रैल, 2017

**का.आ. 1018.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भोजपुर रोहतास ग्रामीण बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ सं. 43/1996) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.04.2017 को प्राप्त हुआ था।

[सं. एल-12012/96/1995-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी



New Delhi, the 17th April, 2017

**S.O. 1018.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/1996) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of Bhojpur Rohtas Gramin Bank and their workmen, received by the Central Government on 17.04.2017.

[No. L-12012/96/1995-IR (B-I)]

B. S. BISHT, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

#### Reference No. 43 of 1996

Employer in relation to the management of Bhojpur Rohtas Gramin Bank

#### AND

Their workman

**Present :** Shri R.K. Saran, Presiding Officer

#### Appearances:

For the Employers : Md. SALim, Rep.

For the Workman : None

State : Jharkhand

Industry : Coal

Dated 24/03/2017

### AWARD

By order No. L-12012/96/1995-IR(B-I) dated 13/08/1996, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

### SCHEDULE

**“Whether the action of the management of Bhojpur Rohtas Gramin Bank, Arrah in terminating the services of sh. Ravi Nath Choudary is justified and legal ? If not, to what relief the workman is entitled to?”**

2. After receipt of the reference, both parties are noticed. But appearing for certain dates by the workman, none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 17 अप्रैल, 2017

**का.आ. 1019.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यस बैंक लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, दिल्ली के पंचाट (संदर्भ सं. 85/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.04.2017 को प्राप्त हुआ था।

[सं. एल-12012/26/2015-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 17th April, 2017

**S.O. 1019.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 85/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure in the Industrial Dispute between the management of Yes Bank Ltd. and their workmen, received by the Central Government on 17.04.2017.

[No. L-12012/26/2015-IR (B-I)]

B. S. BISHT, Section Officer

#### ANNEXURE

#### IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, SHAHADRA, DELHI

ID No. 85/2015

Sh. Rajesh Kumar Singh,  
S/o Sh. Rajendra Singh,  
R/o 150/B, 15, Ward No. 2,  
Garwal Colony, Mehrauli,  
New Delhi – 110030

...Workman

#### Versus

1. The Branch Manager,  
Yes Bank Ltd. (Branch Office),  
B-379, Ground Floor, Meera Bagh, New Delhi – 110063
2. Yes Bank Ltd. (Regd. & Corporate Office),  
Nehru Centre, 9<sup>th</sup> Floor, Discovery of India,  
Dr. A.B. Road, Worli,  
Mumbai-400018

...Management

#### AWARD

Central Government, vide letter No.L-12012/26/2015 (IR(B-I) dated 24.02.2015, referred the following industrial dispute to this Tribunal for adjudication:

“Whether termination of services of Shri Rakesh Kumar, S/o Shri Rajendra Singh by the management of Yes Bank Ltd. w.e.f. 21.07.2014 is just, fair and legal? If not, what relief the workman concerned is entitled to?”

2. It is clear from the perusal of the amended statement of claim that workman was working on the post of Client Relationship Partner (Employee No. 3602005) w.e.f. 11.09.2013 and his last pay drawn wages was Rs. 18,700 per month. That job work of the workman was related to opening of Bank Account. The service record of the workman is neat and clean and there was no complaint against the workman at any times.
3. It is the case of workman that management vide letter dated 27.07.2014 terminated the service of the workman on the ground of poor performance. The workman has also alleged that his performance was good and he used to get regular incentive from the management. Therefore, his order of termination is in violation of natural justice. The management has retained junior workmen to the workman in service and also recruited new faces. However, workman was singled out. Finally a prayer has been made by the workman to declare his termination is illegal and unjustified with the payment of full back wages. The management has contested the case by filing the written statement wherein, preliminary objections have been taken. It is alleged that workman does not fall within the definition of workman as defined in section 2 (A) of the Act. However, it is admitted that workman was appointed as Client Relationship Partner vide letter dated 26.07.2013. The job responsibility of the workman included promotion of service etc, the workman was gone by terms and conditions contained in the letter of appointment dated 26.07.2013. The service of the workman was terminable by issuance of 30 days notice in writing as per the terms and conditions of the above letter or a salary equal end to 30 days in lieu of service of such notice. Therefore, his service was terminated in accordance with the terms and conditions of the employment.
4. It is clear from the record of the case that neither workman nor his A/R appeared on 09.06.2016, 01.08.2016, 19.09.2016, 15.11.2016 and on 07.03.2017. This clearly shows that workman is not interested in adjudication of this case on merits. Since the averments contained in the statement of claim is not proved by any admissible evidence of the record, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award.
5. Be it clarified here that observations made herein before would not legally bar the workman from seeking fresh relief as per law in as much as there is no adjudication of the controversy on merits.

6. As a sequel to my above discussion a 'No Dispute/Claim' award is hereby passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : March 8, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 17 अप्रैल, 2017

**का.आ. 1020.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ सं. 284/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/188/2000-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 17th April, 2017

**S.O. 1020.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 284/2000) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 17.04.2017.

[No. L-20012/188/2000-IR (B-I)]

B. S. BISHT, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

#### Reference No. 284/2000

Employer in relation to the management of State Bank of India

#### AND

Their workman

**Present :** Shri R.K. Saran, Presiding Officer

#### Appearances:

For the Employers : Shri S.N. Goswami, Advocate

For the Workman : None

State : Bihar

Industry : Banking

Dated 11/8/2016

#### AWARD

By order No. L-20012 /188/2000-IR(B-1) dated 25/09/2000, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

#### SCHEDULE

**“Whether the action of management of state Bank of India in awarding penalty vide order dated 26/07/1997 to Sri R.N. Gupta Clerk-cum- Typist regarding stoppage of two increments with effect from Postponing his future increments and his suspension period will not be counted for service, increments or benefits is justified? If not, what relief the workman is entitled?”**

2. After receipt of the reference, both parties are noticed. But appearing for certain dates, none appears on behalf of the workman. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 17 अप्रैल, 2017

**का.आ. 1021.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 89/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.04.2017 को प्राप्त हुआ था।

[सं. एल-12012/29/2002-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 17th April, 2017

**S.O. 1021.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 89/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of Indore and their workmen, received by the Central Government on 17.04.2017.

[No. L-12012/29/2002-IR (B-I)]

B. S. BISHT, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

**NO. CGIT/LC/R/89/2002**

Assistant General Secretary,  
Akhil Bhartiya Adhinasth Bank Karmchari Sangh,  
P.B.No.62, Lashkar,  
Gwalior

...Workman/Union

#### Versus

Assistant General Manager,  
State Bank of Indore,  
Regional Office, Modi House, Jhansi Road,  
Gwalior

...Management

### AWARD

Passed on this 30<sup>th</sup> day of August, 2016

1. As per letter dated 31-5-02 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/29/2002-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Assistant General Manager, State Bank of Indore, Central Office, Gwalior in terminating the services of Shri Vijay Khurana w.e.f. 15-12-99 is justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party submitted statement of claim at page 2/1 to 2/4. Case of Ist party workman is that he was initially appointed as peon on 23-8-93. He was continuously working till 15-12-99. He had worked more than 240 days during each of the calendar year. He is covered as employee under Section 25 B of ID Act. 2<sup>nd</sup> party Bank is statutory organization constituted under SBI Act, 1955. That he rendered his services honestly to satisfaction of his superiors. He worked more than 5 years. His services were not regularized. 2<sup>nd</sup> party terminated his services without notice, retrenchment compensation was not paid to him. It amounts to retrenchment in violation of Section 25-F of ID Act. That 2<sup>nd</sup> party had not followed Section 25-G,H of ID Act., 2<sup>nd</sup> party also not complied with provisions of Rule 77,78 of ID Rules 1957. Termination of his service amounts to victimization and unfair labour practice. After termination, he is unemployed, he could not get any job. On such ground, Ist party prays for his reinstatement with backwages.

3. 2<sup>nd</sup> party filed Written Statement at Page 8/1 to 8/7 opposing claim of workman. 2<sup>nd</sup> party submits that reference is not tenable and Ist party not produced documents about completing 240 days preceding calendar year of his termination. That Ist party was not its employee. He did not work as peon/ farrash in the Bank. The reference is vague. The question of justification or non-justification for termination of employee arises only when employee is employed in

industry following proper recruitment process. Ist party was not appointed or terminated by the Bank. Ist party was not working in Bank. There is no employer employee relation between the parties. Bank is incorporated under SBI Act 1959. As per prevailing procedure in the Bank, appointments of sub staff are made only by Head Office, recruitment procedure after publication in newspaper. The names are sponsored by Employment Exchange. Ist party was not engaged after following such procedure. 2<sup>nd</sup> party further submits that services of Ist party were utilized in Maharajpur branch of the Bank as casual workers only for 2-3 hours in a day on as and when required basis. He was paid amount agreed by them for doing cleaning work. Ist party was not appointed in Bank service. appointment letter was not given to him as part time or regular employee. It is submitted that permanent peon/ safai karmchhari are posted and all work relating to permanent nature are performed by permanent peon, duly recruited following the recruitment process. It is reiterated that engaging or utilizing services for few hours donot given right to become bank employee. Whenever services of Ist party were utilized for few hours. He was paid agreed amount. Disengagement cannot be termed retrenchment rather it is covered under Section 2(oo)(bb) of ID Act. Ist party is not covered in definition of workman. 2<sup>nd</sup> party further submits that daily wagers casual workers have no right for absorption or regularization in service. Ratio held in various cases have been referred in Written Statement. 2<sup>nd</sup> party prays claim of Ist party be rejected.

4. Ist party has filed rejoinder at Page 9/1 to 9/2 reiterating his contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Assistant General Manager, State Bank of Indore, Central Office, Gwalior in terminating the services of Shri Vijay Khurana w.e.f. 15-12-99 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

### REASONS

6. Point No.1- Termination of reference pertains to legality of the termination of services of workman. Workman filed affidavit of his evidence. He has stated that he was engaged as peon on daily wages on 22-8-93 in Maharajpur branch. He continuously worked till 15-12-99, he worked more than 240 days during each of the calendar year. He worked with honesty. His services are orally terminated on 15-12-99, he was not served with notice. Retrenchment compensation was not paid to him. He had not received any chargesheet. DE was not conducted against him. After termination of his service, 2<sup>nd</sup> party engaged other persons on daily wages. He orally requested for re-engagement but he was not engaged by the Bank. After termination of his service, he is unemployed. From his evidence, documents Exhibit W-1 to W-6 are admitted. In his cross examination, Ist party says his date of birth is 15-4-78. He claims ignorance whether his name was not sponsored through Employment Exchange, post was not advertised. Appointment letter was not given to him. He was orally appointed, he was engaged for filling water in the branch whenever there was need. He denies that he not completed 240 days service. he reiterates he is unemployed.

7. Management's witness Shri Naveen Kumar filed affidavit of evidence denying workman was working as peon during 23-8-93 to 15-12-99. Management's witness in his affidavit states that workman was engaged on daily wage basis as per exigency of work. As soon as work was over, he was not able to report to work. Ist party was engaged for 2-3 hours per day on as and when required basis. His further affidavit is devoted about Bank has recruitment rules for selection of sub staff, workman was not appointed following such rules. Ist party not completed 240 days in any of the year. Management's witness denies that junior has been retained in service by management. In his cross, management's witness says during year 1993 to 99, he was working at Malwa branch, Varli branch, Mumbai. During above said period, he was not working at Maharajpur branch. His affidavit is filed as per record. Said record is available in the Bank. Management's witness denies that Ist party was working as peon during 93 to 99. The record pertaining to service of Ist party during 93 to 99 is not produced. Management's witness denies that Ist party workman was paid daily wages at rate agreed earlier. Wages were not settled with Ist party. Payment used to be made by voucher as per working days. Management's witness explained that payment was made on basis of working hours. However record about working hours of Ist party is not produced. Seniority list of daily wage employees working during 93 to 99 was not prepared. He was unable to tell for how much period daily wage employees were engaged in Bank. No procedure is prescribed for engaging daily wage employees. It is clear from cross examination of management witness that his affidavit is based on documents. Said record is not produced. Despite management's witness has admitted in his cross-examination that record is available in the Bank. Thus management has withheld material documents.

8. From evidence of Ist party workman, documents Exhibit W-1 to 6 are proved. Exhibit W-4 is letter addressed by Ist party workman submitting that he was working in the bank from 23-8-93, his gate pass was spoiled. He requested for fresh gatepass. Said letter is dated 20-1-96. Exhibit W-1 shows payment of Rs.780 to Ist party on 5-6-95 for month of May 95. Exhibit W-2 shows payment of Rs.960/- to Ist party workman on 1-3-96 for the period 1-2 to 29-2. Exhibit W-3 shows payment of Rs.800 to Ist party workman on 10-4-96 for the period 1-3 to 31-3. Exhibit W-6 shows payment of Rs.730 on 3-5-95 for the period 1<sup>st</sup> to 30<sup>th</sup> April. Evidence of Ist party is corroborated by documents Exhibit W-1 to 4 & 6. Document Exhibit W-5 is application submitted by workman to the Branch Manager that he was working since 23-8-93 till 15-12-99 that he was illegally disengaged. Management has not produced material documents though available in the Bank as admitted by management's witness in his cross-examination Ist party cannot be expected to produce entire record about his service. when management has paid his wages and withheld material documents, adverse inference deserves to be drawn against management. If those documents would have been produced, it would have supported claim of workman. The evidence is sufficient that workman had worked more than 240 days preceding 12 months of his termination. His services are terminated without notice, retrenchment compensation was not paid to him therefore I hold that termination of services of Ist party is in violation of Section 25-F of ID Act. W.r.t. violation of Section 25-G,H, Ist party has not pleaded or stated the names of the persons working on daily wages with him. Names of other persons engaged after his termination are not disclosed. Therefore violation of Section 25-G,H cannot be established. For the reasons discussed above, I record my finding in Point No.1 in Negative.

9. Point No.2- In view of my finding in Point No.1 termination of service of Ist party is illegal for violation of Section 25-F, question remains for consideration whether Ist party is entitled for reinstatement with backwages.

10. Learned counsel for Ist party Shri K.B.Singh relies on ratio held in case between'

Sudarshan Rajpoot versus Uttar Pradesh State Road Transport Corporation reported in 2015(2)SCC-317. Their Lordship held retrenchment of workman in violation of Section 6N of U.P.Industrial Disputes Act Act referred, retrenchment of workman is void-ab-initio. Labour Court was justified in setting aside termination. In above cited case, witness of EW-1 admitted that the appellant workman was appointed on permanent basis .

The facts of present case are not comparable as there is no evidence that workman was employed on permanent basis. Ratio cannot be applied to case at hand. In support of claim for reinstatement with consequential benefits.

Next reliance is placed in case between Tapash Kumar Paul versus Bharat Sanchar Nigam Limited and another reported in 2014(15)SCC-313. Their Lordship while substitution for order of reinstatement by awarding compensation must be based on grounds like (i) where industry is closed, (ii) where employee has superannuated or is going to retire shortly and no period of service is left to his credit, (iii) where workman has been rendered incapacitated to discharge duties and cannot be reinstated and (iv) when he has lost confidence of management to discharge duties. For violation of Section 25-F of ID Act, their Lordship held employee entitled to reinstatement with backwages in absence of full backwages employee would be distressed and suffer punishment for no fault of his own in absence of proof of gainful employment.

In ratio held in case between Assistant Engineer, Rajasthan Development Corporation versus Gitam Singh reported in 2013(2)-SCC-(L&S)369. Their Lordship dealing with Section 25-F, 1-A of ID Act dealing with wrongful termination of daily rated worker held distinction should be drawn between daily rated workman and worker holding regular post. Service of daily wager who worked for short period of 240 days terminated by employer in contravention of Section 25-F. the award for reinstatement with continuity of service with 50 % back wages was held exercise of judicial discretion suffer from serious infirmity, compensation Rs. 50,000 was awarded.

In case between Vice Chancellor, Lucknow University, Lucknow, UP versus Akhilesh Kumar Khare and another reported in 2016()SCC(L&S) 186. Their Lordship of the Apex Court dealing with termination of services of casual labour held daily wager not entitled to regularization considering that respondents were out of employment for more than 20 years and cannot seek regular appointment elsewhere due to over age, compensation Rs.4 Lakh was directed to be paid.

In present case, evidence of Ist party shows the post was not advertised, appointment letter was not given to him, he was engaged on daily wages. That after termination of his service, he is unemployed. Evidence of workman doesnot disclose how he is surviving all those years without working. The age of workman is shown 35 years in his affidavit. It cannot be believed that workman of such young age survives without working. Considering the Ist party was engaged on daily wages without following any recruitment rules in my considered view, reinstatement with backwages would not be justified instead compensation Rs. One Lakh would be justified. Accordingly I record my finding in Point No.2.

11. In the result, award is passed as under:-

- (1) The action of the management is not legal and proper.
- (2) 2<sup>nd</sup> party is directed to pay compensation Rs. One Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 17 अप्रैल, 2017

**का.आ. 1022.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत वेगन एण्ड इंजीनियर कंपनी लि. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ सं. 57/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.04.2017 को प्राप्त हुआ था।

[सं. एल-41011/24/2011-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 17th April, 2017

**S.O. 1022.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 57/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of Bharat Wagon & Engineering Company Ltd. and their workmen, received by the Central Government on 17.04.2017.

[No. L-41011/24/2011-IR (B-I)]

B. S. BISHT, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

#### Reference No. 57/2011

#### Parties :

Management of Bharat Wagon & Engineering Company Ltd., Muzaffarpur

#### AND

Their workman

**Present :** Shri Ranjan Kumar Saran, Presiding Officer

#### Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the Workman : Shri S. K. Verma, Rep.

For the Workman : Shri Sanjay Kumar, Advocate

State : Bihar

Industry : Railway

Dated 13/2/2017

#### AWARD

By Order No.L-41011/24/2011-IR (B-1), dated 08/12/2011, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

#### SCHEDULE

**“Whether the action of the management of Bharat Wagon & Engineering Company Ltd. Muzaffarpur in not revising the pay scales of their employees w.e.f 01/01/1992, not implementing the adhoc increase of 35% of salary against the pay revision w.e.f April 2009 and non payment of wages on regular intervals, is legal and justified? To what relief the workman/Union is entitled?”**

2. The case is received from the Ministry of Labour on 29.12.2011. After receipt of the reference, both parties are noticed. But long delay the workman files their written statement on 05.06.2015. Thereafter the management also files their written statement on 28.07.2015. Rejoinder & Document filed by the parties which is marked as W-1 to W-14. One witness each from either side have been examined.

3. The case of the workman/Union is that Bharat Wagon workers Union is the only recognised union of Bharat wagon & Engineering Company Ltd. The validity of previous wages settlement in respect of the employees of management expired on 31.12.1996 and revision of pay scale is due from 01.01.1997 inspite of best efforts of the union the management did not even start negotiation for revision of pay scales. The employees of the management are still working on the pay scale of 1992. But the salary is not paid timely. Now the salary of employees is due from April 2014.
4. It is also submitted by the Union that the management had invited bipartite discussion on 22.10.2009 at Head Office of the management at Patna. It was agreed by both parties that the management will make adhoc increase from 01.04.2009. It was also agreed by the management that regular payment of adhoc salary be given from July 2009. Then salary and arrear for the period from April 2009 to June 2009 shall be paid.
5. Thereafter the management assured to obtain approval of Ministry of Railway within 15 to 20 days . But the management did not get required approval of Ministry till today inspite of bipartite settlement of dated 22.10.2009. But the management failed to implement the settlement and the management did not agree to pay adhoc increase of 35% basic pay plus DA nor required approval from Ministry of railway within stipulated period. The matter is still pending nothing has been done so far.
6. It is further submitted by the workman that the employee of the company is still working on the pay scale of 1992 i.e the salary of the employee is quit meager to meet and fulfill even the basic needs of life like foods, clothes etc. There are all around increase in the cost of living over the past 23 years and non revision of the pay scales has further deepened de-motivation , resentment and discouragement amongs workers.
7. On the other hand the case of the management is that revision of pay w.e.f 01.01.1997, we have to state that Bharat Wagon & Engg. Co. Ltd is sick Unit registered with Board of Industrial & Financial Reconstruction registered under case No. 501/2001 . This is sick unit registered with BIFR untill BIFR approves revival plan of such enterprises in which provision have been made for additional expenditure on account of pay revision hence revision of pay would not be allowed to the employee of such enterprises.
8. It is also submitted by the management that Ad-hoc increased of 35% of salary against pay revision w.e.f. April 2009. It is stated that during the meeting with recognised Union on 22.10.2009. That Ad-hoc payment of 35% against the wage revision will be paid subject to the approval of Ministry of Railway which was only one of the point of the meeting, It was not an agreement with the Union, and non payment of wages on regular interval they state that inspite the facts that there is acute crisis of fund, the payment is not made.
9. It is further submitted by the management that Govt. of India issued guidelines in respect of revision of pay scale vide its office memorandum dated 25<sup>th</sup> June 1999 i.e “ In respect of sick enterprises referred to BIFR revision of pay scales would be strictly in accordance with rehabilitation package approved or to be approved by the BIFR and after providing for the additional expenditure on account of pay revision in these packages”
10. On the other hand the case of the Railway Board is that any revision of pay scale for sick companies under BIFR has to be done as per the DPE guidelines .
11. It is further submitted by railway that it is pertains to BWEL, but it is mentioned that railways sanctioned a financial assistance of Ra. 43.63 crores in the year 2013 for aiding revival of BWEL . This financial assistance included of Rs. 22.57 crores towards working capital and Rs. 9.10 crores for employees related dues. Rs.11.06 crores for other statutory dues as well as the Railway pays many rupees for help to BWEL by providing workload of wagon repair. It is stated that despite railways financial and other assistance the company has not been able to attain profitability so far.
12. The management here is a subsidiary public company of Indian Railways, which repairs railway wagons etc. It is alleged by the Union that they are not getting required salary from the management but the management said there is no work for the workmen and this company is running on loss, for which the wages as demanded is not paid.
13. There was various discussion between the management and the Union and finally bipartite settlement was arrived. But the Union submitted that the said bipartite settlement is not adhered to and the management is dilly dally the process. On the other hand the management said there is no work, hence the payment is delayed and may not be possible . In the bipartite settlement one important clause was noted in para-7 of the written statement of the Union which is quoted below which has not been denied by the management:-

XXX

***“The management had invited union for bipartite discussion on 22.10.2009 at head Office of the management at Patna. It was agreed by both parties that the management will make adhoc increase from 01.04.2009 . It was also agreed by the management that regular payment of adhoc salary be given from July 2009 , salary and arrear for the period from April 2009 to June 2009 shall be paid.”***

14. The same thing was decided in the high level meeting and one para is extracted below on salary issue:-



**Salary Issue:-** *Factors affecting pay revision of BWEL employees were discussed along with the proposal of BWEL's Board of Directors for a 35% adhoc payment instead of salary revision.*

15. The Railway Board was made party to the reference and says they will abide the award but in the written statement of railway it appears that railways sanctioned a financial assistance of Ra. 43.63 crores in the year 2013 for aiding revival of BWEL. Therefore the management to pay 35% the salary atonce in lieu of salary revision. The management both Railway Admn, and the BWEL to see how to utilise the workmen and resources to run the corporation on profit.

16. Considering the facts and circumstances of this case I hold that the action of the management of Bharat Wagon & Engineering Company Ltd. Muzaffarpur in not revising the pay scales of their employees w.e.f 01/01/1992 and not implementing the adhoc increase of 35% of salary against the pay revision w.e.f April 2009 and non payment of wages on regular intervals, is not legal and justified . Hence the management is directed to pay 35% the salary atonce in lieu of salary revision.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 17 अप्रैल, 2017

**का.आ. 1023.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दुर्ग राजनांदगांव ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 35/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.04.2017 को प्राप्त हुआ था।

[सं. एल-12011/43/95-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 17th April, 2017

**S.O. 1023.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Durg RAjnandgaon Gramin Bank and their workmen, received by the Central Government on 17.04.2017.

[No. L-12011/43/95-IR (B-I)]

B. S. BISHT, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/35/97

General Secretary,  
Durg Rajnandgaon Gramin Bank Workers Association,  
Gayatri Nilayam,  
MIG-786, MPHB Colony,  
Kurud, Bhilai Via Jamul,  
Durg

...Workman/Union

#### Versus

The Chairman,  
Durg Rajnandgaon Gramin Bank,  
MP Housing Board, GE Road,  
Rajnandgaon (MP)

...Management

#### AWARD

Passed on this 20<sup>th</sup> day of February 2017

1. As per letter dated 7-2-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/43/95-IR (B-I). The dispute under reference relates to:

“Whether the action of the management of Durg Rajnandgaon Gramin Bank in not promoting LDCs with 4 years service as UDCs w.e.f. 1-1-1985 as per guide lines issued by NABARD vide letter No. IDD/RRB/IOC/316(Gen)84785 dated 31-12-1984 is justified? If not, to what relief the workman are entitled?”

2. After receiving reference, notices were issued to the parties. Ist party Union submitted statement of claim at Page 3/1 to 3/5. Case of Ist party Union is that it is registered under Trade Union Act 1926. The employees of Durg Rajnandgaon Gramin Bank are its members. The employees mentioned in list were appointed as LDC. That Durg Rajnandgaon Gramin Bank was sponsored by Dena Bank. The Dena Bank is a Regional Rural Bank under the Regional Rural Bank Act 1976. The provisions of said act are applicable to the Bank. Central Government is its Controlling Authority through RBI/NABARD and sponsoring Bank under the Regional Rural Bank Act 1976. The circulars issued by Central Government or with the concurrence of Central Govt. by RBI/ NABARD/ Sponsoring Bank are binding on the RRBs. The Board of Director of Regional Rural Bank can make regulations to carry out the provisions of the RRB Act 1976 with consultation of RBI/ NABARD and sponsoring Bank and with the previous sanction of Central Government. That the Reserve Bank of India/ National Bank for Agricultural and Rural Development and the sponsoring Banks (Dena Bank) are statutory consultative authority for the DRGB for all matters under the RRB Act, 1976. That for creation and recruitment of various posts, the consultation with RBI/ NABARD/ sponsoring Bank and prior sanction of the Central Govt is mandatory on the part of RRBs is mandatory. RBI on recommendation of Chairman of RRBs had constituted committee in February 1980 for suggesting appropriate guidelines in order to ensure effective control over the bank. Said committee submitted recommendations. Chapter 7 of recommendation deals with staffing pattern of Regional Rural Banks and other matters. The report deals with creation of Sr.Clerk/ UDC placed on performance of branches. The report of the Committee was accepted by Screening Committee on 20-7-81. The report was circulated by RBI in September 1981, Bank received said report on 16-10-81. It is further contented that RBI repeatedly sought implementation of report from Chairman of RRB. It is alleged that DRKG Bank created post of Sr.Clerk/ UDC and made recruitments since inception of the Bank in absence of business norms prescribed by the RBI. That NABARD which is statutory consultative authority of RRB issued a circular with the approval of Government of India dated 31-12-84 with the approval of Government of India in the matter of recruitment and promotion to the various posts in RRBs and these instructions are binding on the RRBs. Said circular was received by the Bank in the month of January 1985. Under the circular, 100 % promotions to senior clerks are to be made from junior clerks cum cashiers. No direct recruitment was made to the post of sr. clerks. The instructions issued by NABARD dated 31-12-84 have retrospective effect. The DRKG Bank acted contrary to the instructions by appointing 20 UDC directly in the year 1985. As per instructions dated 31-12-84, post of UDC should have been given to the working LDCs. Management violated recommendations and guidelines dated 29-9-81 in recruiting UDC, Sr. Clerk affecting promotions of the supervisors. It is alleged that management violated guidelines dated 31-12-84 issued by NABARD. That dispute was raised in the year 1988. 2<sup>nd</sup> party management failed to appear and no dispute award was passed on 19-3-91. The Union challenged said award before Hon'ble High Court. As per directions issued by Hon'ble High Court, dispute has been raised. After FOC, dispute is referred. Ist party prays that junior clerks cum cashier are entitled to promotion to the post of Sr. Clerk cum cashier from 1-1-1985 wages of Sr. Clerk cum cashier from 1-1-1985 with consequential benefits be paid.

3. 2<sup>nd</sup> party filed Written Statement opposing claim of workman at Page 11/1 to 11/20. 2<sup>nd</sup> party submits that DRKG Bank is established under Section 3(1) of RRB Act 1976. Bank came in existence on 12-3-80 as per notification dated 11-3-80. Section 11(1) of RRB Act deals with appointment of officers and other employees for efficient performance and function of the Bank. 2<sup>nd</sup> party management has also referred to notification by Government of India dated 6-1-77. The RRBs can create various posts in different cadres Branch Manager, Field Officer, Accountant, Field Assistant, Clerk and Junior Clerk etc. As per management, word “Clerk” is equivalent to Sr.Clerk/ UDC. Recruitment was to be made after examining the actual needs of the Bank. In view of above guidelines by Government of India, the posts of officers, Manager, LDC, UDC were created. The recruitment of staff under different category of post was made as per the need and requirement on the basis of work load. It is further submitted that the recruitment of staff in different categories including UDC LDC engaged above were earlier made in 1982 to 1983 following the Government guidelines. That RBI while dealing with the licensing policy had mandated that the Bank was required to open 40 new branches by March 1985 with span of 15 months. NABARD issued letter dated 7-8-84. In December 1983, there were 40 licences pending with the Bank for opening of branches. The need of taking up the branch expansion programme by the RRBs was passed by RBI and NABARD. The circular dated 29-8-84 pertain to special responsibility to be discharged in the matter of branch expansion. That target of one branch for 17,000 population was given. RRB had special responsibility to be discharged in the matter of branch expansion. It is obvious that top priority was attached to this national programme of branch expansion at one and all the levels for taking banking facilities to hitherto unbanked/ unbanked areas so as to cover on an average basis about 17000 population. The Bank was required to take steps for opening 40 branches which included recruitment of staff of different categories. The branches were to be opened till March 1985 as per the RBI directions. The Bank was under obligation to recruit staff in various cadres as per national programme so that rural poors donot suffer for want of manpower. After having the staff requirement under different categories matter was placed before Board and its meeting was held on 27-4-84 for grant of approval.

That the Board had given consent for recruitment of 55 officers, 20 UDC/LDC in newspaper on 6-8-84. About 8000 applications were received. Reviews and selection process was undertaken. The test of eligible candidates was conducted on 11-11-84. Guidelines dated 31-12-84 were received from NABARD by the Bank on 7-1-85. The Board was also consulted as the selection process was already started and interviews were taken, Board had advised to proceed with the matter. The selected candidates were issued appointment orders. In pursuance of resolution dated 16-2-85, Board had thoroughly discussed various aspects and approved the panel list. Out of 38 UDC, 42 LDC in panel list. The appointment orders were issued to 20 UDC and 20 LDC. It is reiterated that if claim of Ist party Union is accepted, it will lead to various industrial disputes as the UDC appointed following selectin process were already confirmed. The dispute was raised vide representation dated 4-4-88 after delay of 304 years. Therefore claim of Ist party Union cannot be accepted. That post of LDCs/ UDCs was merged w.e.f. 1-9-87 vide Circular dated 22-2-91. Post of UDC is not exceeding after impursuance of the merger. The dispute was referred by Notification dated 27-7-89. Since nobody from the Ist party was interested in prosecuting the dispute, this Tribunal passed no dispute award dated 19-3-91. In parawise reply, 2<sup>nd</sup> party has reiterated above contentions. It is not disputed that RBI/ NABARD are the Controlling Authorities. The claim of Ist party Union is misconceived. 2<sup>nd</sup> party Bank submits that out of 7 chapters of the report, only 5 chapters were sent to the Bank for initiating action vide circular dated 29-9-81. Said communication was also clear that the Committee has made certain recommendations on organisational structure as staffing pattern. The matter has been examined and separate instruction have been issued in due course. Thus the staffing pattern in RRB was still under examination of the Government of India. The Screening Committee considered report in meeting held on 20-7-81, the recommendations of committee were approved. The recommendations contained in Para 1 & 8 are under consideration of Government of India,. Besides it, the post of UDC was created in Bank from very beginning. The vacancies for post of UDC were created prior to circular dated 31-12-84. Post were advertised on 6-8-84. Interviews were conducted on 11-8-84 and the circular was issued in January 1985. The LDC have no right to get promotion to the post of UDC. If claim is allowed, it will lead to multiple disputes. On such ground, 2<sup>nd</sup> party prays claim of Union be rejected.

4. Interveners filed Written Statement contending that meeting of Union was held on 27-4-97, 5-10-97. Decision was taken in those meeting to contest present dispute is incorrect. Ist party has fabricated documents of the meeting,. The result of the Union reflects that the resolution were prepared after meeting of the executive committee. That Mr. R.Sharma intervenor was elected as President. Shri Lalwani was General Secretary of the Union in October 2002. Bank has issued notification dated 6-8-84 for filling 20 post of UDC by direct recruitment. Interveners fulfilled eligibility and qualification to the post of UDC had applied for said post. The written test for post of UDC was conducted on 11-11-84. The intervenors participated and after qualified Written Test, they were called for interview. The successful candidates were given appointment in February March 1985. The seniority list of UDC is also referred. The intervenors reiterates that when circular dated 31-12-84 was issued, any of the LDC had not completed 4 years service. They were not eligible for promotion. That subsequently post of LDC and UDC are merged and the post is re-designated as clerk cum cashier. The intervenors were appointed as UDC. The intervenors are further promoted as officers Scale I w.e.f. 5-11-04. The intervenors prays for rejection of claim of Ist party.

5. Ist party filed rejoinder at page 15/1 to 15/27 reiterating most of their contentions in statement of claim. Amendment dated 28-9-88 RRB may appoint the officer and employees as it may consider necessary. That as per letter dated 12-10-78, 16-2-79, the functions pertaining to recruitment, training etc. are pleaded. The recruitment and creation of post during the year 1981 to 1985 are narrated. That in SLP, 11418 to 11420/97, management admitted rules called RRB- appointment and promotions of 1988. LDCs were considered for promotion as per circular dated 31-12-84. Post of UDC was to be filled by promotion of LDC> management has violated circular issued by NABARD dated 31-12-94. Ist party submits that as per judgment in 1994-5-SCC-450, the claimants have right to be considered for promotion. Direct appointment of UDC by management violated their right to promotion.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Durg Rajnandgaon Gramin Bank in not promoting LDCs with 4 years service as UDCs w.e.f. 1-1-1985 as per guide lines issued by NABARD vide letter No. IDD/RRB /IOC/316(Gen) 84785 dated 31-12-1984 is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workmen are not entitled to any relief.

**REASONS**

7. The term of reference pertains to legality of denial of promotion of LDCs with 4 years service from 1-1-1984 as per circular dated 31-12-84. The claim of Ist party is opposed by management Bank as well as intervenors directly appointed as UDCs. Any of the parties have not adduced evidence. Their participation is only to the extent of filing pleadings. The documents produced by Ist party admitted by the management Exhibit W-1 is forwarding letter dated 26-7-88 issued in pursuance of amendment of 1982 in Rule-13. Sr.list is enclosed along with said letter. Exhibit W-2 is forwarding letter dated 10-5-82 Chapter 2 to 6 of the report was forwarded for implementation. Chapter 2 to 6 referred in the letter are not produced. Exhibit W-2(b) is letter dated 9-9-82 forwarding report for implementation. The report is not enclosed with letter. Similarly Exhibit W-2(c) is forwarding letter dated 3-3-84 Chapter 2 to 6 of the recommendations of the Committee are not enclosed with it. Exhibit W-3 is letter issued by General Manager in the matter of recruitment, promotion to the post of junior clerk-cum-cashier, Sr. Clerk-cum-cashiers. Said letter refers to streamline procedure for filling vacancies in RRBs to bring about uniformity. The guidelines to be followed in recruitment of staff – Sr.clerk, Junior clerk etc. the guidelines produced at Exhibit W-4 dated 31-12-84 is produced. The post of Sr.Clerk was to be filled 100 % from junior clerk. Claim of Ist party is based on said guidelines. Exhibit W-5 is letter dated 21-11-86 in the matter of recruitment and promotion of staff. Exhibit W-6 is forwarding letter of Seniority list. Seniority list is enclosed. Exhibit W-7 is copy of ordersheet dated 9-4-94. The Hon'ble High Court dealing with no dispute award dated 19-3-91 passed by this Tribunal, the petitioner was given liberty to raise dispute again. Exhibit W-8 is copy of order of reference dated 2-2-97. Exhibit W-9 is office order issued in the matter of recruitment, training, postings following 100 % roster. No date of issue has been mentioned. Exhibit W-11 is copy of agenda/ note pertaining to the matters considered as per circular dated 22-2-91 in the matter of transfer allowance, leave encashment, leave of HRA, Vehicle loan, Housing Loan etc. the documents have no reliefs to the dispute under reference. Exhibit W-12 is letter dated 21-5-85 in the matter of result of the selection. Exhibit W-13 is copy of forwarding letter of seniority list. Exhibit W-14 is letter sent by Chief General Manager in the matter of implementation of circular dated 31-12-84. Exhibit W-15 is letter dated 20-11-86 w.r.t. recruitment and promotion policy of staff by Dy.General Manager. The meeting was to be called immediately. Exhibit W-13(b) is forwarding letter of seniority list.

8. Ist party has contented that the circular dated 3-12-84 has retrospective effect but documents produced on record find no such reference that said circular was to be given retrospective effect. Prior to the Bank received circular dated 31-12-84 issued by NABARD, the recruitment process was also started.

9. Management produced Exhibit M-1 copy of notification dated 12-3-90. Dena Bank was sponsorer Bank for DRKG Bank. Exhibit M-2 is document whereby chairman of all RRB were given directions in the matter of recruitment. Branch Manager, field officers, Accountant, clerk. The qualification required for post of clerk is degree from recognized university. The qualification for the post of junior clerk required passing matriculation or HSc. Said documents shows 2 sets of post of clerk and junior clerk. Management reiterates that the post of clerk was construed as UDC. Exhibit M-3 to 5 are letters issued in the matter of expansion of branches. Exhibit M-6 is copy of letter dated 18-6-88 sent by Chairman to Mathew UDC that his representation could not be considered. Exhibit M-7 is copy of failure report dated 15-11-88 sent by ALC, Raipur. Exhibit M-8 is no dispute award passed by this Tribunal. Exhibit M-9 is letter dated 29-9-81 sent by Dy.Chief Officer to all Chairman of Regional Rural Bank. Exhibit M-10 is letter dated 10-5-82 in the matter of implementation of Chapter 2 to 6 of the Committee. The copies of Chapter 2 to 6 of the report are not enclosed. Exhibit M-11 also pertains to letter dated 7<sup>th</sup> March pertaining to some matter. Exhibit M-12 is letter issued in the matter of implementation of circular dated 31-12-84. Exhibit M-13 is copy of circular dated 31-12-84. M-14 is copy of advertisement given for post of UDC. M-15 is documents disclosing 17 clerks promoted on the basis of seniority.

10. As stated above, both parties not adduced evidence. Claim of Ist party that circular dated 31-12-84 has retrospective effect is not supported from documents. The post of LDC & UDC are merged in the year 1987 and re-designated as clerk cum cashier is not in dispute. The pleadings between parties shows that Bank was established in 1980. The LDC were appointed after establishment of Bank. No evidence is adduced by Ist party about the LDC completing 4 year period prior to 1-1-85 as such claim of Ist party for promotion as per circular dated 31-2-84 is not established. Therefore I record my finding in Affirmative.

11. In the result, award is passed as under:-

- (1) The action of the management of Durg Rajnandgaon Gramin Bank in not promoting LDCs with 4 years service as UDCs w.e.f. 1-1-1985 as per guide lines issued by NABARD vide dated 31-12-1984 is legal and proper.
- (2) Workmen are not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 17 अप्रैल, 2017

**का.आ. 1024.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ सं. 77/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/289/2004-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 17th April, 2017

**S.O. 1024.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 77/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 17.04.2017.

[No. L-20012/289/2004-IR (B-I)]

B. S. BISHT, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

**Reference No. 77/2005**

Employer in relation to the management of SBI, Bhagalpur

**AND**

Their workman

**Present :** Shri R.K. Saran, Presiding Officer**Appearances:**

For the Employers : Shri S.N. Goswami, Advocate

For the Workman : Shri Anandi Hari, in person

State : Bihar

Industry : Banking

Dated 7.9.2016

**AWARD**

By order No. L-20012/289/ 2004-IR (B-I) dated 29/08/2005, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

**SCHEDULE**

**“Whether the action of the management of State Bank of India, Bhagalpur in terminating the services of Shri Anandi Hari instead of regularizing his services without complying Section 25 –F of I.D. Act is legal and justified? If not, to what relief Shri Anandi Hari is entitled to?”**

2. After receipt of the reference, both parties are noticed. But concerned workman appears and submits that he does not want to contest the case. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 17 अप्रैल, 2017

**का.आ. 1025.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रेलवे इंडियन टेक्निकल इलेक्ट्रिक सर्विस के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 138/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.04.2017 को प्राप्त हुआ था।

[सं. एल-12025/01/2017-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 17th April, 2017

**S.O. 1025.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 138/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the management of Railway Indian Technical Electric Service and their workmen, received by the Central Government on 17.04.2017.

[No. L-12025/01/2017-IR (B-I)]

B. S. BISHT, Section Officer

### ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

**ID No. 138/2013**

Shri Samundar Singh S/o Shri Randhir,  
Houe No.482, Friends Colony,  
Near Shiv Mandir, Bhadurgarh Distt. Jhajjar,  
Haryana

...Workman

### Versus

1. Railway Indian Technical Electrical Services  
Near Power Grid, IFFCO Chowk,  
Gurgaon, Haryana
2. M/s. Ex-Servicemen's Airlink Transport Services (P) Ltd.  
Regd. Head Office 62, Yashwant Place,  
Chanakyapuri, New Delhi

...Management

### AWARD

This claim has been filed directly by the claimant, Shri Samunder Singh under Section 2-A of the Industrial Disputes Act (in short the Act) with the averments that the claimant was engaged as a security guard with the management with effect from 19.10.2006 on a monthly salary of Rs.10,820.00. The claimant was performing his duties sincerely and honestly and there was no complaint against him from any quarter during his tenure of service. Management was forcing the claimant to work for more than 12 hours, which is totally unfair and without payment of any overtime wages. Lastly, services of the claimant were terminated on 03.09.2012 by obtaining signatures of the claimant on blank papers. Claimant has not been paid his wages for the current month as well as arrears on account of overtime done by the claimant during his service. Claimant vide letter dated 22.09.2012 made reference to the management to clear his arrears but of no use. Thereafter, matter was raised by the claimant before the Assistant Labour Commissioner, whose report is dated 29.08.2013 as matter could not be settled between the claimant and the management. Resultantly, claimant was constrained to approach this Court in the manner stated above. It is further alleged that the claimant worked for more than 240 days in each calendar year. Lastly, claimant has stated that order of his termination dated 03.09.2012 is totally unfair and illegal and he be reinstated with back wages.

2. Claim was resisted by the managements, who filed separate replies, taking preliminary objections. It has been specifically alleged by Railway Indian Technical Electrical Services (in short RITES) that there is no relationship between them and the claimant. Claimant was never in the employment of RITES and they had awarded contract to management No.2 Ex-Servicemen's Airlink Transport Services (P) Ltd.(in short EATS Ltd.), who has engaged the claimant. RITES is a Government of India company having 100% share holding of Ministry of Railways. For the purpose of engaging security etc. it is engaged in services of security company, who are on the panel of Directorate General of Resettlement (DGR) for providing security services and DGR had sponsored EATS Ltd. The said contract was for a period of 2 years and same has come to an end and EATS Ltd. is no longer providing any security services to RITES.

3. On merits, RITES has denied most of the material averments. It is also denied that the claimant was asked to work for more than 12 hours and he was not paid his dues etc. Claimant, in fact, was not working with RITES. It is also denied that the claimant has worked for 240 days in a calendar year.

4. EATS Ltd. also filed a separate reply, taking preliminary objections, inter alia of maintainability etc. It is averred that the claimant was purely engaged on contract basis for a particular contract and on termination of the said contract by Container Corporation of India. Services of the claimant automatically came to an end. However, the claimant was given another contractual appointment upon his repeated requests at Maulana Azad Medical College from 01.07.2010 to 30.06.2012, which was subject to contract with the management of Maulana Azad Medical College purely on humanitarian grounds. Thereafter, workman repeatedly requested the management to give him another opportunity to work with some other DGR and on humanitarian grounds, one more contractual appointment at RITES township, Ashok Vihar, New Delhi was given with effect from July 2012 to September 2012. Claimant has himself moved an application on 09.09.2012 requesting the management that he would not serve RITES until and unless he is given double duty. Same was not agreed to by the management as the said request was against the laws and hence declined. Claimant instead of performing his duties, abandoned his job on his own on 01.09.2012. It is also admitted that the claimant has sent demand notice through the union, which was duly replied by the management and union was also apprised of the stand of the management. Finally, only an amount of Rs.819.00 was found payable to him, which was offered to him through cheque but the claimant refused to accept the same. Management has denied other averments made in the statement of claim.

5. Claimant has filed rejoinder to the written statement filed by the managements.

6. Against this factual background, from the pleadings of the parties, my learned predecessor, framed the following issues vide order 01.01.2017:

- (i) Whether termination of services of the claimant by management No.2 amounts to retrenchment within the meaning of section 2(oo) of the Industrial Disputes Act, 1947?
- (ii) Whether claimant is entitled to reinstatement in service of Ex-Servicemens Airlink Transport Services (P) Ltd.

7. Claimant in order to prove the case against the management, examined himself as WW1 and also tendered in evidence Ex.WW1/1 to Ex.WW1/25.

8. Management No.1, RITES was proceeded ex-parte on 25.06.2015. management No.2, EATS examined Major Harpat Singh as MW1, who also tendered in evidence Ex.MW1/1 to Ex.MW1/6.

9. I have heard Shri I.S. Mudgal, A/R for the claimant and Shri Sanjiv Sharma, A/R for management No.2 EATS. None appeared on behalf of RITES, management No.1 to present facts on their behalf.

10. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

#### **Issue No.1**

11. It is clear from the statement of the claimant as well as pleadings on record that the claimant was engaged initially on 19.10.2006 as security guard by EATS. It is also clear from perusal of identity card Ex.WW1/1 that the same was issued by EATS and date of issuance is 21.11.2009 and Ex.WW1/2 is 06.08.2002. Pay slip of the claimant is Ex.WW1/3, which shows that he was being paid salary of Rs.9812.00, and after deductions of PF, ESI, an amount of Rs.8918.00 was being paid to the claimant by EATS. Pay slips Ex.WW1/4 to Ex.WW1/23 of the claimant shows that he was continuously in the employment with EATS during the period mentioned in the pleadings.

12. Major Harpat Singh, in his affidavit Ex.MW1/A has alleged in para 3 of the affidavit that management, on humanitarian grounds, rendered help to the claimant by giving his contractual basis at RITES, Ashok Vihar from July 2012 to September 2012 and the claimant has himself moved an application on 09.09.2012 that he would not serve RITES any more unless he is given double duty. The said application is Ex.MW1/3, which shows that the claimant has requested the management to offer him double duty as he was not in a position to perform single duty. Management has also tendered in evidence Ex.MW1/4, which shows that an amount of Rs.819.00 was payable to the claimant but the claimant in fact has not accepted the said amount from the management. However, letter Ex.MW1/1 shows that EATS was duly informed by Administrative Officer, Maulana Azad Medical College regarding extension of period of 2 months of security services contract with effect from 01.05.2012 to 30.06.2012 on the same terms and conditions. From the last line of the letter, it is clear that contract with the agency would be terminated on 01.07.2012. This shows that services of the claimant, along with other security guards, was to continue till 01.07.2012 as contract was extended.

13. Letter of appointment/engagement of the claimant in the present case has also been filed by EATS, which shows that they had engaged the workman from November 2006 and not from 2008 as was being contended on behalf

of the management. There is also mention of Rs.3478.00 as wages in the above letter and this appointment was up to February 2007. During the course of arguments, it was not denied that the claimant herein remained almost in continuous service right from 2006 till his termination on 09.09.2012.

14. Now, the vital question before this Tribunal is whether the case of the claimant herein is covered by provisions of section 2(oo) of the Act. Before I proceed to consider the comparative merits of the submissions, it is necessary to refer to the definition of 'retrenchment' as contained in Section 2(oo) and the same is as under:

1\*[(oo) "retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

2\*[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill-health;

15. It was strongly contended on behalf of the management that appointment of the claimant herein was for a specific period and after expiry of the said period, contract has come to an end. Attention of the court was drawn to the fact that the claimant has himself given in writing that he be given double duty, which was not permission under labour laws as it amounts to unfair labour practice and because of this, the claimant has abandoned his job on 09.09.2012 of his own. Thus, in the contention of the management, even a registered letter Ex.MW1/W1 was sent to the claimant, but the same was received back undelivered. Thus, it is a case of abandonment of service also.

16. Per contra, learned A/R for the claimant argued that there is ample evidence on record to suggest that the claimant was in continuous employment with the management right from 2006 till his so called termination on 09.09.2012. In this regard, attention of the court was invited to letter dated 10.11.2006 filed by RITES, relied upon by the management but not exhibited, which shows that management has engaged the claimant herein as security guard from November 2006 on a salary of Rs.3478.00. There is nothing on record to show that till his so called termination on 09.09.2012, he was ever terminated or he was disengaged in any manner by the management. Various salary slips Ex.WW1/3 to Ex.WW1/23 also show that he was continuously serving EATS and has worked for more than 240 days. Since the claimant has specifically alleged that he was in the employment of the management as security guard and also proved various salary slips as well as proof of his engagement, in such an eventuality onus shifts upon the management to prove that the claimant has not completed 240 days in any calendar year. So far as contention of the management that he was engaged for a particular period for a particular task is concerned, same appears to be meritless in view of the clear cut evidence on record that right from November 2006 to 09.09.2012 claimant remained in the employment of EATS.

17. The workman also placed reliance upon the case of Bhuvnesh Kumar Dwivedi vs. Hindalco Industries Ltd. (2014 Lab.IC 2643) wherein Hon'ble Apex Court discussed in extenso provisions of section 2(oo)(bb) of the Act as well as similar provisions contained in UP ID Act. It was noticed by the Apex Court that services of the workman was terminated several times and he was subsequently employed again till his services were finally terminated. He has rendered more than 6 years of service, save the artificial breaks made by the management with an oblique motive so as to retain the appellant as temporary worker. Aforesaid conduct of the management was held to be unfair labour practice under Section 2(ra) of the Act which is not permissible in view of sections 25T and Section 25(U) of the Act read with entry in Serial No.10 in the V Schedule to the Act regarding unfair labour practice. It was the case of the workman that he has worked for six calendar years from the date of his appointment till termination of his services, thus completing 240 days in each calendar year. Labour Court held termination of the job of the workman to be illegal, unjustified and ordered payment of full back wages. In writ appeal, High Court set aside the award of the Tribunal. When matter was taken to Apex Court, it was held to be exercise of excess jurisdiction by the High Court under Article 227 of the Constitution of India.

18. Lastly, on behalf of the workman, reliance was placed on SM Nilajkar vs. The District Manager, Karnataka (2003 Lab.IC 2273). It was a case where a number of workmen were engaged as casual labour for the purpose of extension of telecom facilities and their services were utilized for digging and laying of cables, erecting of poles and drawing of lines. Services of these workmen were terminated somewhere in the year 1985. Thereafter, they were not engaged on the said work. In the first round of litigation Hon'ble Apex Court directed the State Government to formulate a scheme under which all casual labourers who had rendered more than one year's continuous service could be absorbed. When these workmen were not finally re-engaged or absorbed in the job, they took the matter to the Industrial Tribunal and award was passed on 21.06.1999 by the Tribunal directing the employer to reinstate all the



workmen into service with the benefit of continuity of service and with 50% back wages. The employer filed writ petition in the High Court and learned Single Judge of the High Court held that workers were not project employees as their appointments were not for any particular project. As such, case of such employee was not covered by sub clause (bb) of clause (oo) of Section 2 of the Act. Since the workman had served for more than 240 days in a calendar, their termination amounted to retrenchment, which was invalid for non-compliance of Section 25-F of the Act. However, it was observed by the Hon'ble High Court that there was a delay of 7-9 years in raising the dispute, which was not promptly raised, as such the workmen were not held entitled to back wages. The employees again filed intra-court writ appeal before the Division Bench of High Court. It was admitted case of the parties that workers were employed by Telecom Department as casual labours in connection with the project for extension of telecom facilities and their services were utilized for digging, laying of coaxial cables and other sundry work. The project was completed sometime in the year 1986-87. Division Bench further held that case of the workman herein was in fact covered under sub clause (bb) of clause (oo) of Section 2 of the Act. It was a clear case of termination of services of the workmen as a result of non-renewal of contract of employment on the expiry of contract. Resultantly, question of compliance of Section 25-F of the Act did not arise and the workmen could not be said to have been retrenched. Engagement of the workmen was on daily wages and only for the purpose of completion of the project undertaken by the Telecom Department at a given place. When the project stands completed, there is no question of retrenchment of the workmen whose contract stood expired. However, when matter was taken to the Apex Court, decision of the Division Bench of the Hon'ble High Court was set aside and that of learned Single Judge was restored except for the finding that the workmen were not project employees. Contention of the management that workmen were employed for general maintenance of Telecom Department against a specific project and for specific period was out-rightly rejected by the Apex Court. It was also held that engagement of workman on daily wages does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or upto to occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. Further, the Court went to observe that it was for the employer to prove that case of the workman was not covered by the definition of 'retrenchment' so as to attract applicability of the said sub-clause (bb) of clause (oo) of Section 2 of the Act. Consequently, in view of the ratio of law, in Officer Incharge Defence Standardization Cell (supra), Satyapal (supra), SM Nilajkar (supra) and Bhuvanesh Kumar Dwivedi (supra), there is no need to follow ration of judgements of the other High Courts, particularly when the case of the workman herein is fully covered by the judgement of Hon'ble Apex Court as well as Delhi High Court.

19. Management also invited attention of this Tribunal to the case of Punjab State Electricity Board vs Darbara Singh decided by the Hon'ble Apex Court on 17.11.2005 wherein the workman was a peon on daily wages from 08.01.1988 to 29.02.1988. It was also made clear that when the new incumbent would join services, his services would be deemed to be terminated without notice and the post was alleged to be purely temporary in nature. There were extensions in service from time to time for short periods. Later on, on 12.05.1989 another workman Shri Surant Singh was appointed on permanent basis. The first appointee workman challenged the action of the management and the Labour Court held the disengagement of the workman to be illegal and ordering his reinstatement. Even a writ petition filed before the Hon'ble High Court was also dismissed and ultimately the management of Punjab State Electricity Board took the matter in appeal to the Hon'ble Apex Court wherein provisions of Section 2(oo)(bb) as well as Section 25F etc. were discussed in extenso. Judgement rendered by the High Court was set aside by the Hon'ble Supreme Court, by placing reliance upon Anil Bapurao Kanase vs Krishna Sahakari Sakhar Karkhana Ltd. and Anr (1997(10 SCC 599) it was held as under:

'The learned counsel for the appellant contends that the judgment of the High court of Bombay relied on in the impugned order dated 28/3/1995 in Writ Petition No. 488 of 1994 is perhaps not applicable. Since the appellant has worked for more than 180 days, he is to be treated as retrenched employee and if the procedure contemplated under Section 25-F of the Industrial Disputes Act, 1947 is applied, his retrenchment is illegal. We find no force in this contention. In Morinda Cooperative Sugar Mills Ltd. v. Ram Kishan in para 3, this court has dealt with engagement of the seasonal workman in sugarcane crushing; in para 4, it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after the crushing season was over. Accordingly, in para 5, it was held that it is not "retrenchment" within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the principles of the Act have no application. However, this court has directed that the respondent management should maintain a register and engage the workmen when the season starts in the succeeding years in the order of seniority. Until all the employees whose names appear in the list are engaged in addition to the employees who are already working, the management should not go in for fresh engagement of new workmen. It would be incumbent upon the respondent management to adopt such procedure as is enumerated above.

20. In view of the above discussion, it is held that engagement of the claimant herein was not against a particular work or task. Rather, he was in continuous employment since November 2006 till his abandonment/termination on 09.09.2012.

21. Plea of the management that the claimant has himself abandoned his job does not appeal to the reasons particularly in view of the fact that the management in its pleadings has also taken the stand that the case of the claimant is not covered by provisions of Section 2(o) of the Act inasmuch as claimant was engaged only for a particular period against a particular task. There is no evidence on evidence worth the name on record to suggest that the claimant has himself left the job voluntarily. Simply because the claimant wanted double duty, as is clear from evidence on record, does not mean that the claimant was not interested in continuing with his previous job. It only shows that the claimant wanted to simply earn more but the management rightly declined prayer of the claimant for double shift/duties as the same would have amounted to unfair labour practice. This does not prove the case of the management in any manner that the claimant has voluntarily left his job. There is no evidence on record to suggest that any show cause notice was served on the claimant regarding his voluntary abandonment of his job and not joining duties despite service of such notice. It has been held in the case of *Shri Satvir Singh Vs. Presiding Officer* (2017 LLR 35) that plea of abandonment of job, taken by the management, in the absence of issuance of notice to the workman in this respect, while he was absenting from duty is not sustainable. Lumpsum compensation in lieu of reinstatement is justified in view of short term service of only for three years and long span of time spent in litigation.

22. Similar view appears to have been taken in the case of *Kali Ram vs. Presiding Officer* (2017) LLR 95.

23. The Tribunal cannot ignore the fact that EATS has neither issued any notice as required under Section 25-F of the Act nor offered one month's salary before ordering termination of the claimant. Law is fairly settled that in view of the mandatory requirement of Section 25-F, service of such notice is essential and in case of breach of the above mandatory provision, action of the management would become illegal. Accordingly, it is held that provisions of section 2(o) are not attracted to the case in hand nor claimant has abandoned his job. As such, it is held it does not amount to retrenchment.

#### Issue No.2

24. It is held by the Tribunal that action of the management in not serving any notice in terms of provisions of Section 25F of the Act is per se illegal and as such termination of the claimant is bad in law. Claimant has stated in para 7 of his statement of claim that he is out of job after his termination and despite making efforts he could not get a job. There is no cross examination of the claimant regarding his gainful employment anywhere. No doubt, claimant is an ex-serviceman and is also getting pension but the grounds of pension has not much to do with the re-employment of the claimant. Since more than four years have lapsed after termination of the claimant, it would not be possible for the management to reinstate the workman in the same position, as there is no existing contract between RITES and EATS, i.e. management No.1 and management No.2; as such, this Tribunal is of the opinion that instead of reinstatement, compensation of Rs.3 lakh is just and sufficient to meet the ends of justice. Hence, management is directed to pay a sum of Rs.3 lakh to the claimant herein, *Shri Samunder Singh*. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : February 1, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 17 अप्रैल, 2017

**का.आ. 1026.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बिहार स्टेट को-ओपरेटिव बैंक लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ सं. 12/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.04.2017 को प्राप्त हुआ था।

[सं. एल-12011/81/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 17th April, 2017

**S.O. 1026.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2013) of the Central Government Industrial Tribunal-cum-

Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of Bihar State Co-Operative Bank Limited and their workmen, received by the Central Government on 17.04.2017.

[No. L-12011/81/2012-IR (B-I)]

B. S. BISHT, Section Officer

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

### Reference No. 12/2013

Employer in relation to the management of Bihar State Co-Operative Bank Ltd., Patna

### AND

Their workman

**Present :** Shri R.K. Saran, Presiding Officer

### Appearances:

For the Employers : None

For the Workman : Shri B. Prasad, Rep.

State : Bihar

Industry : Banking

Dated 10/02/2017

### AWARD

By Order No.L-12011/81/2012-IR (B-1), dated 05/06/2013, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

### SCHEDULE

**“Whether the Management of the Bihar State Co-operative Bank Limited, Patna is un-necessarily delaying the proper implementation of wage revision and payment of accrued arrear to the employees and the implementation of the promotion policy? If so, what should be time frame for full implementation of bank’s resolution dated 06.04.2011.”**

2. The case is received from the Ministry of Labour on 28.06.2013. After receipt of the reference, both parties are noticed. The workman files their written statement on 31.07.2013. After long delay and several adjournment, the management neither files written statement nor adduce any evidence. But document of workman is marked as W-1 to W-3.

3. The case of the Union is that as per decision of the Bank, the pay and allowance of the staff members will be at par with Bank of India which is a leading public sector Bank of corporate under Banking companies Act. 1970.

4. It is also submitted by the union that the Bank of India is a member of Indian Banks Association who entered into Industry Level Bipartite Settlement (9<sup>th</sup> Bipartite Settlement) with the workmen Unions and the Officers Union on 27.3.2010 and accordingly the salary structures at different cadres were revised w.e.f. 01.11.2007 and the terms of 8<sup>th</sup> Bipartite Settlement ended on 31.10.2007. After signing of the 9<sup>th</sup> Bipartite settlement of Banking Industry level the, the Union submitted a copy of settlement before the managing Director and the chariman of the Bank demanding immediate implementation of 9<sup>th</sup> Bipartite Settlement.

5. It is further submitted by the union that memorandum to the management at different echelons and ultimately the Administrator of the Bank issued instruction on 16.12.2011 relating to wage revision of the employees of the Bank. Thereafter the managing Director of the Bank issued office orders No.1530 dated 23.12.2011 in terms of Board resolution No.2 dated 28.01.2011 and subsequent order of Administrator dated 16.12.2011 thereby revising the pay scales and other allowances with leave fare concession of all categories of officers and staff of the Bank w.e.f. 01.11.2007 on notional basis. But the order dated 23.12.2011 the staff members of the Bank are being paid revised pay scale of 9<sup>th</sup> bipertite settlement w.e.f. 01.12.2011 but the staff members are required to be paid arrear of wages from 01.11.2007 to 30.11.3011 as well as promotion of members of staff from subordinate cadre to clerical Cadre and clerical cadre to officer cadre and officer to higher rank.

6. The short point involved in this reference is whether pay revision of the workman of Bihar State Co-operative Bank be implemented, when and why it is delayed and to fix a time limit to implement the same.

7. Perused the written statement and rejoinder of the workman and paper of management. It is seen from the written statement of the workman that the management is delaying the implementation of promotional policy and the new scale etc. But from the rejoinder of the management it appears tha they are actually delaying process because without assigning any reason of non implementation. They have mentioned that, the Central Govt. is not the approriate Govt to send reference to this Tribunal. If that is their stand they ought to challenge the reference, before the appropriate froum but not here. This Tribunal has to decide the reference which are refered.

8. It is a plain reference that the MD has already passed order to implement revised pay and allowances w.ef. 01.05.2010 as refelected in its order. Hence the management is directed to implement its order marked as Ext-W-2 within six months from the date of publication of the award in the Official Gazettee, as otherwise liable to prosecute.

This is my award.

R. K. SARAN, Presiding Officer